163 U.S. 701

TRANSCRIPT OF RECORD.

163-701

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 932

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY,
PLAINTIFF IN ERROR,

vs.

CORA E. NIXON.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED 189 .

(16222)

( )

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No. 233.

United States Circuit Court of Appeals for the Ninth Circuit.

PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Plaintiff in Error,
vs.
CORA E. NIXON, Defendant in Error.

Transcript of Record.

In error to the United States circuit court, district of Washington, western division.

1 In the Circuit Court of the United States for the District of Washington, Western Division, February Term, 1895.

Be it remembered, that on the 30th day of June, 1894, there was duly filed in said circuit court of the United States, for the district of Washington, western division, a transcript from the superior court of the State of Washington, for Pierce county, in words and figures as follows, to wit:

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant. } No. 11455.

Transcript on Removal to United States Circuit Court, District of Washington, Western Division.

Messrs. Thos. Carroll and Palmer & Palmer, attorneys for plaintiff.

Messrs. Walker & Fitch, attorneys for defendant.

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2 In the Superior Court of the State of Washington for Pierce County.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Complaint.

Plaintiff for her cause of action states:

I.

That the defendant is a corporation duly incorporated under the laws of the State of New York, and at all times mentioned in this complaint, was such corporation, and as such was doing business at Tacoma, State of Washington.

II.

That on the 12th day of June, 1886, for and in consideration of thirty-two dollars and eighty-five ($32.85) cents, and other good and sufficient consideration, the defendant by and under the terms of a certain written contract, commonly known and called a policy of life insurance, agreed, undertook and stipulated for the use and benefit of this plaintiff, to insure the life of one Thomas Lea Nixon, husband of this plaintiff, and did then and there insure the life of said Thomas Lea Nixon, and thereby agreed and undertook to pay, in the event of the death of said Thomas Lea Nixon, to this plaintiff, the sum of five thousand ($5,000) dollars, provided that
3 such death should occur on or before noon on the 12th day of September, 1886, and the defendant, in said written contract, further stipulated, agreed and undertook in consideration of certain quarterly payments to be made on the 12th days of September, December, March and June, in each successive year, to extend and renew said policy of insurance for like periods of time, the said quarterly payment, to be called for by the said society, to wit, the defendant, which said contract of insurance is in the words and figures as follows, to wit:

No. 10647. The Provident Savings Life Assurance Society of New York $5,000.

In consideration of the application herefor, and which is made a part of this contract, and in consideration also of the payment of thirty-two dollars and eighty-five cents, doth hereby promise to pay to Cora E. Nixon, wife of Thomas Lea Nixon, the assured under this policy, or to the legal representatives or assigns of said assured, at its office in the city of New York, the sum of five thousand dollars, within ninety days after the acceptance of satisfactory proof of the death of Thomas Lea Nixon of Tacoma, county of Pierce, and Washington Territory (the assured under this policy), provided such death shall occur before 12 o'clock noon on the twelfth day of September, A. D. 1886.

And the said society further promises and agrees to renew and extend this insurance during each successive quarter year from date hereof, upon condition that the assured shall pay on or be-
4 fore the twelfth day of September, December, March and June, in each successive year, during the continuance of this contract, the mortuary premium as called for by the society in accordance with the schedule rates for the actual age printed on the back of this policy, and also an expense charge of seventy-five cents on each one thousand dollars insured herein, the payment of said quarterly mortuary premiums and the quarterly-expense charge being the consideration for the continuance of the insurance in each successive quarter year and provided also that the conditions, stipulations and agreements upon which this policy is issued shall be faithfully observed and faithfully carried out.

Premiums shall be paid as called for to the society at its office in the city of New York, on or before the dates herein specified.

Seventy-five per cent. of each mortuary premium paid herein will be at once deposited in trust in the Hanover National Bank of New York, or such other bank as may be designated by the society, and shall constitute the death fund, to be used solely in settlement of death claims. The residue of each mortuary premium will be deposited with the Farmers' Loan and Trust Company of New York, or invested in securities authorized by law for investment by trust companies for the guaranty fund, additional to the capital and as a further protection to policy-holders. The full share of the surplus thus obtained, contributed by each policy remaining in force for ten years, and annually thereafter, may be applied to lessen future premiums, or paid in cash.

5 Notice of the amount of the quarterly premium falling due and demand for its payment addressed to the within-named insured at his post-office address as it appears on the books of the society deposited in the post-office, postage prepaid, is accepted by the assured as a sufficient personal notice and demand.

One hundred thousand dollars has been invested in U. S. bonds, in trust for all the policy-holders, and has been deposited with the insurance department of the State of New York.

No assignment of this policy shall be valid unless it is in writing, and assented to in writing by said society, and any claim against this society arising under this policy made by any assignee, shall be subject to satisfactory proof of interest.

This society allows the insured under this policy to travel and visit within the following geographical limits, and to make voyages in first-class vessels to and from places within said limits, during the periods hereinafter respectively provided:

1. In the United States of America, and its Territories except in places south of 32 north latitude, where at the time of such visit or travel yellow fever or cholera exists. Within the Dominion of Canada. In Europe north of the 42d parallel of north latitude.—During the entire year.

2. Also on the continent of Europe, south of
Examined. E. the 42d parallel of north latitude, and in Egypt, Palestine and Syria.—During the months of Nov., Dec., Jan., Feb., Mar.

Subject to the following conditions.

That neither a state of war, nor cholera, yellow fever, or
6 plague shall exist at any such place in foreign countries during the period when so resided in or visited.

Occupations and employments.—The insured shall not engage in blasting, mining, submarine labor, aëronautic travel or excursions, the manufacture, hauling or transportation of inflammable or explosive substances, service upon any railroad or any steamboat or other vessel, or in military or naval service of any kind during war, without the consent of the society in writing, under penalty of forfeiture of the policy.

Powers of agents.—No agent has power in behalf of the society to make or modify this or any contract of insurance, to extend the time for paying the premium, to issue a permit for residence, travel, or occupation, or to bind the society by making any promise, or by receiving any representations or information not contained in the application for this policy.

This policy shall be void, if the insured shall die by his own hand or act, or in consequence of a duel or by the hands of justice, or in violation of, or attempt to violate any criminal laws of the United States or of any State or country in which the insured may be.

Should the within-named insured impair his health by an excessive use of stimulants or narcotics the society reserves the right to cancel its agreement to continue and extend this insurance, by notice sent to him in the manner above specified, in respect to notices of premiums, and agrees to repay to the assured, in that event, on demand at its office in the city of New York, his full share of the aforesaid guaranty fund.

7 Should claim be made under this policy by reason of death happening three or more years after its date the foregoing conditions as to residence, occupation and the payment of premiums and expense charges having been complied with, such claim is hereby declared to be incontestable.

In witness whereof, the Provident Saving-Life Assurance Society of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, on this, the twelfth day of June, A. D. one thousand eight hundred and eighty-six.

JOSEPH H. PARSONS,
Vice-President.

WM. E. STEVENS, *Secretary.*

Maximum Mortuary Premiums for Each $1,000 *Insured.*

Quarterly renewable policies; other amounts in the same proportions.

Actual age.	For three months.
15–25	3 00
26	3 06
27	3 12
28	3 18
29	3 24
30	3 30
31	3 33
32	3 39
33	3 45
34	3 48
35	3 54
36	3 60
37	3 66
38	3 75
39	3 84
40	3 93
41	4 02
42	4 14
43	4 26
44	4 41
45	4 59
46	4 80
47	5 04
48	5 28
49	5 55
50	5 88
51	6 24
52	6 66
53	7 11
54	7 59
55	8 16
56	8 76
57	9 45
58	10 20
59	11 01
60	11 94

Rates for ages above sixty years will be furnished on application.

The mortuary premiums after the first payment, required to continue and extend insurance, can never exceed the maximum quarterly rates named in the above table, but will be diminished by the surplus portion of the preceding premium not appropriated by reason of actual claims by death.

9 NEW YORK, ——, 188–.

Received from the Provident Savings Life Assurance Society of New York, — dollars, in full, for all claims under the within policy, terminated by —— ——.

—— ——.

III.

That upon the said 12th day of June, 1890, the plaintiff paid the defendant more than the sum actually due said defendant upon the premium falling due upon said date, which sum was paid through the mistake of defendant in charging plaintiff in the quarterly notice as provided in said contract, to be served upon the plaintiff. That the plaintiff at the time said overpayment was made, notified the defendant that too large a sum was charged, and that defendant afterwards notified plaintiff that it had been overpaid for June 12th, 1890, premium, and agreed to credit the amount so overpaid it by plaintiff for the quarter commencing September 12th, 1890. That defendant has never credited plaintiff with any sum whatever so overpaid as aforesaid, upon the quarterly payment for September 12th, 1890, nor has it informed plaintiff of the amount overpaid in June, 1890, nor what the balance was that plaintiff would be required to pay to keep alive said policy for the quarter commencing September 12th, 1890, for the benefit of the insured and plaintiff has never known what amount it was necessary should be paid to defendant for the quarter commencing September 12th, 1890.

10 IV.

That, on or about the 12th day of October, 1890, the defendant having failed to notify this plaintiff the amount of premium which would fall due September 12th, 1890, this plaintiff tendered the defendant an amount of money amply sufficient to pay any balance which might be held to be due on the quarterly payment for that quarter, which tender was refused by the defendant and this plaintiff was advised that said policy had lapsed, and that no further payments would be received whereby, by said wrongful act of the defendant, the said contract was broken and this plaintiff damaged by the breach thereof.

V.

That the quarterly premiums under said contract or policy of insurance varied from time to time in amounts, and this plaintiff could not know the amount which would be necessary to keep alive said policy of insurance unless she were notified by the defendant according to the terms of the said contract or policy of insurance; but the defendant has wholly failed to give this plaintiff notice of the amount of premium falling due for any quarter subsequent to the 12th day of June, 1890.

VI.

That on the 16th day of April, 1891, said Thomas Lea Nixon died, leaving this plaintiff, his widow and sole beneficiary under

the contract of insurance sued on herein; that at the death of said Thomas Lea Nixon all the conditions and terms of the said
11 contract of insurance had been fully complied with by the assured and plaintiff, as far as it was in their power so to do.

That upon the death of the said Thomas Lea Nixon aforesaid, this plaintiff notified the defendant of the death of the assured and demanded the amount due her under the terms of said policy; but the defendant refused and still refuses to pay this plaintiff any part thereof.

VII.

And the plaintiff further alleges that in the payment of the said several successive quarterly premiums provided by said contract of policy of insurance, the defendant by its custom and manner of doing business never required plaintiff's intestate to make payment of said quarterly premiums upon the dates and times mentioned in said policy, but on the other hand from time to time waived compliance with said requirements, and received and accepted from said intestate the said sums due as premiums from time to time without objection longer after the same became due, and duly applied said payments upon said premiums to all intents and purposes as though made in time, and thereby induced said intestate and this plaintiff to believe that a strict compliance with the terms and conditions of said policy would not be required or insisted upon by the defendant.

Plaintiff for her second cause of action, says:

I.

That the defendant is a corporation duly incorporated
12 under the laws of the State of New York, and at all times mentioned in this complaint, was such corporation, and as such was doing business at Tacoma, Washington.

II.

That on the 11th day of October, 1889, for and in consideration of two hundred and fifty-eight ($258.00) dollars, to it in hand paid by the plaintiff herein, and other good and sufficient consideration, the defendant, under and by the terms of a certain written contract, commonly known and called a policy of life insurance, agreed, undertook, and stipulated for the use and benefit of this plaintiff, to insure the life of one Thomas Lea Nixon, husband of this plaintiff, and did, then and there insure the life of said Thomas Lea Nixon, for the period of one year from said date, and thereby agreed and undertook, in the event of the death of said Thomas Lea Nixon, to this plaintiff the sum of fifteen thousand ($15,000) dollars, provided that such death should occur before 12 o'clock noon of the 11th day of October, 1890, and the defendant in said written contract further stipulated, agreed and undertook in consideration of certain annual payments, to be made on the 11th day of October, in each successive year, to renew and extend said policy of insur-

ance upon like conditions during each successive year of the life of the insured.

A copy of said contract or policy of life insurance is in the words and figures, as follows, to wit:

One hundred thousand dollars has been invested in bonds, in trust for all the policy-holders, and has been deposited with the insurance department of the State of New York.

13 No. 32025. The Provident Savings Life Assurance Society of New York $15,000.

In consideration of the application herefor, and of the conditions and agreements on the back of this policy, all of which are a part of this contract; and in consideration also of the payment of two hundred and fifty-eight dollars and — cents,

Doth hereby promise to pay to Cora E. Nixon, wife of Thomas Lea Nixon (the beneficiary under this policy), or to the legal representatives or assigns of said beneficiary, at its office in the city of New York, the sum of

Fifteen thousand dollars.

(Less any indebtedness on account of this policy), within nine days after acceptance of satisfactory proof, at its office in the city of New York, of the death of Thomas Lea Nixon, of Tacoma, county of Pierce, and State of Washington (the insured under the policy), provided such death shall occur before 12 o'clock, noon, on the eleventh day of October, A. D. 1890.

And the said society further agrees to renew and extend this insurance upon like conditions during each successive year of the life of the insured from date thereof, upon the payment on or before the eleventh day of October, in each successive year, of the annual premium for the actual age attained, in accordance with the schedule rate printed on the next page of this policy for each one thousand dollars insured, except as reduced by the application of the surplus and guaranty fund.

Examined. H.

14

Subject to the stipulation regarding payment of premiums, and extra-hazardous occupations claim under this policy by death occurring two or more years after its date will be incontestable, except for fraud in obtaining this policy.

In witness whereof, the Provident Savings Life Assurance Society of New York, has caused this policy to be signed by its president and secretary, at its office in the city of New York on this, the eleventh day of October, A. D. one thousand eight hundred and eighty-nine.

SHEPPARD HOMANS, *President.*

WM. E. STEVENS, *Secretary.*

L. R.
A.

Conditions and Agreements Referred to on the Preceding Page of This Policy.

SECTION 1. This policy does not go into effect until the first premium has been actually paid. No agent is, or will be authorized to make, alter, or discharge this contract; or to waive any forfeiture thereof, or to extend this insurance, or to grant permits, or to receive for premiums anything but cash.

SEC. 2. Premiums are due and payable to the society at its office in the city of New York, but may be paid to an authorized agent on or before the dates when due, but only in exchange for a receipt signed by the president or secretary, and countersigned by the agent.

SEC. 3. The annual premiums of this policy may, by consent of the society, be paid by the half-yearly, or quarterly equivalent as indicated below, if desired, but failure to pay when due any semi-annual or quarterly equivalent will then terminate the policy. In case of claim by death, any unpaid portion of the annual premium will be deducted from the sum insured.

SEC. 4. After deducting the expense charge, which is limited to four dollars per annum, on each one thousand dollars insured, the society agrees to appropriate the residue of each renewal premium paid upon this, and other similar policies, as follows: So much thereof as is necessary for its share of death losses will be deposited in such bank or banks as shall be designated by the directors, as a death fund to be used solely in settlement of death claims. The remainder thereof will be deposited in trust as a guaranty fund in the Farmers' Loan and Trust Co., or in such other depository as shall be designated by the directors, and will be applied to offset the otherwise unavoidable increase in the rates of premium on account of advancing age. In case of death the unused surplus in the guaranty fund contributed by this policy will be paid as an addition to the sum insured. Should the policy after five full years' premiums have been paid be terminated solely by the non-payment of any stated premiums when due, said unused surplus may be applied to purchase paid-up insurance, provided application be made therefor while this policy is in full force and effect, otherwise said surplus will be applied as a single premium to renew and extend the full amount of this insurance for so long a time as said surplus so used, will purchase.

SEC. 5. Assignments of this policy must be in writing, and notice thereof given to the society, and any claim arising under this policy shall be subject to satisfactory proof of interest.

SEC. 6. Should the within-named insured reside or travel in any region where the climate is extra hazardous, or should he engage in any extra-hazardous occupation, the society reserves the right to adjust the dividend on this policy in accordance with the extra mortality in such class or classes.

Rates of Premiums to Renew and Extend an Insurance of $1,000.

Other amounts in the same proportion.

	Age actually attained.	Annual.	Half-yearly equivalent.	Quarterly equivalent.
	15.25	13.75	7.15	3.72
		14.00	7.28	3.80
	26	14.25	7.41	3.85
	27	14.50	7.54	3.92
	28	14.75	7.67	3.98
	29	15.00	7.80	4.06
	30	15.25	7.94	4.13
	31	15.50	8.06	4.19
	32	15.70	8.16	4.54
	33	15.88	8.26	4.30
	34	16.04	8.34	4.34
	35	16.24	8.44	4.39
	36	16.44	8.55	4.45
	37	16.68	8.67	4.30
17	38	16.92	8.80	4.38
	39	17.20	8.94	4.65
	40	17.48	9.09	4.73
	41	17.80	9.26	4.82
	42	18.16	9.44	4.91
	43	18.60	9.67	5.03
	44	19.04	9.90	5.15
	45	19.60	10.19	5.30
	46	20.20	10.50	5.46
	47	20.88	10.86	5.65
	48	21.72	11.30	5.88
	49	22.64	11.77	6.12
	50	23.68	12.31	6.40
	51	24.84	12.92	6.72
	52	26.02	13.58	7.06
	53	27.60	14.35	7.47
	54	29.24	15.00	7.80
	55	31.00	16.12	8.38
	56	33.25	17.30	9.00
	57	35.75	18.60	9.67
	58	38.50	20.02	10.41
	59	41.50	21.58	11.22
	60	45.00	23.40	12.17
	61	49.00	25.78	13.41
	62	53.00	27.56	14.33
	63	57.50	29.90	15.55
	64	60.76	31.60	16.43
	65	64.96	33.78	17.57
	66	70.72	36.77	19.13
	67	77.16	40.12	20.86
	68	84.24	43.80	22.78
	69	92.12	47.90	24.91

18 NOTE.—Provided the mortality in this society shall be as favorable in the future as it has been in the past in the largest and best in the other companies (thus far it has been more favorable) this insurance will be extended and renewed during the whole expectation or probable lifetime of the insured at the rate of premium charged for the first year only of the policy.

III.

That this plaintiff was accustomed with the knowledge and consent of the defendant to transact business with the defendant through its duly organized agent at Tacoma, Washington. That in the month of October, 1890, this plaintiff called upon the person who had theretofore acted as such agent of the defendant, to pay the premiums necessary to keep alive said policy of insurance for the ensuing year; but this plaintiff was informed by the said person that he was no longer acting as such agent and was not authorized to accept premiums upon the policies of said company but the said person informed this plaintiff that the Traders' Bank of Tacoma, Washington, was authorized to receive said premium. That thereafter, on the 31st day of October, 1890, this plaintiff tendered the amount of said premium to the said Traders' Bank of Tacoma, Washington, but said tender was refused.

That no notice was ever sent to this plaintiff by the defendant herein that the powers of its said agent had ever been revoked, and that by reason of such failure this plaintiff was hindered and prevented from paying said premiums until long after the same was due under the strict terms of the contract or policy of insur-
19 ance, and the defendant thereupon claimed a forfeiture of said policy of insurance to the great damage of this plaintiff.

But this plaintiff alleges that the defendant company had often accepted overdue premiums from this plaintiff on policies issued by said defendant, and in which this plaintiff was the beneficiary, and thereby induced this plaintiff to believe that a strict compliance with the terms and conditions of said policy in respect to forfeitures, in case payments were not promptly made, would not be insisted upon by the defendant.

Wherefore, plaintiff prays judgment against the defendant for the sum of twenty thousand ($20,000) dollars, and for her costs and disbursements in this action.

THOS. CARROLL AND
PALMER & PALMER,
Attorneys for Plaintiff, No. 408, '9, '10 *Merchants' National Bank Building, Tacoma, W. T.*

STATE OF WASHINGTON, } ss:
County of Pierce, }

Cora E. Nixon, being first duly sworn upon oath, says: That she is the plaintiff in the above-entitled action; that she has heard the foregoing complaint read, knows the contents thereof, and that she believes the same to be true.

CORA E. NIXON.

Subscribed and sworn to before me, this 13th day of April, 1894.

[NOTARIAL SEAL.] GEO. L. PALMER,
Notary Public in and for the State of Washington,
Residing at Tacoma.

20 We, the undersigned attorneys for the plaintiff in the above-entitled cause, do hereby certify that the above and foregoing complaint and summons are true and correct copies of the original complaint and summons in said cause.

____ ____,
Attorneys for Plaintiff.

Filed April 14, 1894.

W. A. RYAN, *Clerk*,
By F. DOWD, *Dep.*

In the Superior Court of the State of Washington for the County of Pierce.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE Assurance Society of New York, Defendant.	Case No. 11455. Dep't No. 1. Entry of Appearance.

Entry of Appearance.

Comes now the said defendant, The Provident Savings Life Assurance Society of New York, and by its attorneys, Walker & Fitch, enters its appearance in this action, and herewith files its petition for the removal of said cause into the United State- circuit court, for the district of Washington, western division.

WALKER & FITCH,
Attorneys for the Defendant, 607–'9 Fidelity Trust Building, Tacoma, Pierce County, Washington.

21 To Messrs. Thomas Carroll and Palmer & Palmer, attorneys for plaintiff, and to the clerk of the superior court of the State of Washington, for the county of Pierce.

Received a copy of the enclosed entry of appearance this 2d day of May, 1894.

CARROLL AND PALMER & PALMER,
Attorneys for —.

Filed May 2, 1894.

W. A. RYAN, *Clerk*,
By H. JOHNSTON, *Deputy.*

In the Superior Court of the State of Washington for the County of Pierce, Dep't No. 1.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant. } Case No. 11455.

Petition for Removal of Cause to the United States Circuit Court for the District of Washington, Western Division.

To the honorable the superior court of the State of Washington for the county of Pierce:

Your petitioner respectfully shows that it is the defendant in the above-entitled suit, and that it is a non-resident of the State
22 of Washington; and that the nature and amount in dispute in the said suit exceeds, exclusive of interests and costs, the sum or value of two thousand ($2,000) dollars.

That the said suit is of a civil nature, the object being the recovery of a judgment for twenty thousand ($20,000) dollars against your petitioner on alleged contracts of life insurance.

That the controversy in the said suit is wholly between citizens of different States, to wit: between your said petitioner, who avers that it was at the time of the beginning of this suit, and still is a citizen of the State of New York, and the said plaintiff, who, as your petitioner avers, was then, and still is a citizen of the State of Washington.

And your petitioner offers herewith a bond with good and sufficient surety for its entry in said circuit court of the United States on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no further herein, except to make an order for the removal of this cause to said circuit court, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States, in and for the district of Washington, western division, and it will ever pray.

WALKER & FITCH,
Attorneys for Petitioner, 607–'9 *Fidelity Trust Building, Tacoma, Pierce County, Washington.*

23 STATE OF WASHINGTON, } ss:
County of Pierce, }

George H. Walker, being first duly sworn, deposes and says that he is a member of the firm of Walker & Fitch, the attorneys for the petitioner in the above-entitled action; that he has read the foregoing petition; that he knows the contents thereof; that he believes

the same to be true, and that the reason this verification is made by this affiant is that the petitioner is not a resident of this State.

GEORGE H. WALKER.

Subscribed by the said George H. Walker in my presence, and by him sworn to before me, this 1st day of May, A. D. 1894.

[NOTARIAL SEAL.] JAMES M. HARRIS,
Notary Public, Residing at Tacoma, Pierce County, Wn.

Received a copy of the enclosed petition this 2nd day of May, 1894.

CARROLL AND PALMER & PALMER,
Attorneys for Plaintiff.

Filed May 2, 1894.

W. A. RYAN, *Clerk*,
By H. JOHNSTON, *Deputy*.

24 In the Superior Court of the State of Washington for the County of Pierce.

CORA E. NIXON, Plaintiff, vs THE PROVIDENT SAVINGS LIFE Assurance Society of New York, Defendant.	Case No. 11455. Dep't No. 1. Bond for Removal of this Cause to the United States Circuit Court for the District of Washington, Western Division.

Bond on Removal.

Know all men by these presents:

That the Provident Savings Life Assurance Society of New York, as principal, and Chas. E. Hale, as surety, are held and firmly bound unto Cora E. Nixon in the penal sum of three hundred ($300) dollars, for the payment whereof well and truly to be made unto the said Cora E. Nixon, her heirs and assigns, the Provident Savings Life Assurance Society of New York binds itself, its successors and assigns, and Chas. E. Hale binds himself, his heirs, representatives and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions, the said The Provident Savings Life Assurance Society of New York, having petitioned the superior court of the State of Washington, for the county of Pierce, for the removal of a certain cause therein pending, wherein Cora E. Nixon is plaintiff and The Provident Savings Life Assurance Society of New York is defendant, to the circuit court of the United States in and for the district of Washington, western division.

25 Now, if the said, The Provident Savings Life Assurance Society of New York, your petitioner shall enter in the said circuit court of the United States on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly re-

moved thereto, then this obligation to be void; otherwise in full force and virtue.

Witness their hands and seals this 1st day of May A. D. 1894.

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK,
By WALKER & FITCH, *Its Attorneys.* [SEAL.]
CHAS. E. HALE. [SEAL.]

STATE OF WASHINGTON, }
County of Pierce, } *ss:*

Chas. E. Hale of said county, the surety named in the foregoing bond, being first duly sworn deposes and says:

That he is a resident freeholder of the State of Washington, that he is worth the sum of three hundred ($300) dollars the amount specified in the foregoing bond, over and above all his just debts and liabilities, exclusive of property exempt from execution; and that he has property in the State of Washington liable to execution, of the value of more than $300.00.

CHAS. E. HALE.

26 Subscribed in my presence by the said Chas. E. Hale, and by him sworn to before me this 1st day of May, 1894.

[NOTARIAL SEAL.] JAMES M. HARRIS,
Notary Public, Residing at Tacoma, Pierce County, Washington.

Received a copy of the enclosed bond this 2nd day of May, 1894.

CARROLL AND PALMER & PALMER,
Attorneys for Plaintiff.

Entered Book of Bonds No. E, page 437, 438.
Filed May 2, 1894.

W. A. RYAN, *Clerk,*
By H. JOHNSTON, *Deputy.*

Be it remembered, that at a session of the superior court of the State of Washington, in and for the county of Pierce, department No. 1, held at the court-house in the city of Tacoma, in said county and State, on the 2nd day of May, A. D. 1894. Present: the Honorable W. H. Pritchard, presiding judge of such department, Alexander Matthews, sheriff, and W. A. Ryan, clerk, the following proceedings (*inter alia*) were had and done, to wit:

27 CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE Assurance Society of New York, Defendant. } Case No. 11455. Dep't No. 1. Order for Removal of this Cause to the United States Circuit Court for the District of Washington, Western Division.

Order for Removal.

On the pleadings and proceedings herein, and on the petition and bond filed herein, by the defendant, The Provident Savings Life

Assurance Society of New York, pursuant to the statutes of th United States, in such case made and provided, and on motion Messrs. Walker & Fitch, attorneys for the defendant,

It is ordered, that the security offered by the said defendant, Th Provident Savings Life Assurance Society of New York, be approve and that the State court proceed no farther in this cause, and tha this cause be removed into the circuit court of the United States for the ninth district, State of Washington, western division.

W. H. PRITCHARD, *Judge*.

Dated this 2nd day of May, 1894.
Entered Journal 33, dep't 1, page 546, May 2, '94.

28 No. 11455.

Appearance Docket.

Superior Court of Pierce County, Washington, Holding Terms at Tacoma.

Attorneys—Palmer & Palmer, for plaintiff; Walker & Fitch, for defendant.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Class 7; dep't 1.

Date, 1894. *Proceedings of Cause.*

April 14. Complaint filed.
May 2. Bond, petition and appearance filed.
" 2. Order removing cause; ent. J. 33, p. 546.

No. 11455.

CORA E. NIXON
vs.
PROVIDENT SAVINGS LIFE A. S.

Palmer & Palmer, attorneys for pl'ff; Walker & Fitch, attorneys for def't.

Date, 1894. Plaintiff's fees:	DR.	CR.
Apr. 14. To docket	4 00	4 00
Date, 1894. Defendant's fees:	DR.	CR.
May 2. To app.....	2 00	2 00

29 CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant. } No. 11455.

Clerk's Certificate.

STATE OF WASHINGTON, *County of Pierce,* } *ss:*

I, W. A. Ryan, clerk of the superior court of the State of Washington, for the county of Pierce, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record in the above-entitled cause as I am by a statute required to transmit on change of venue to the United States court, for the district of Washington, western division.

In testimony whereof, I have hereunto set my hand and the seal of said superior court this 29th day of June, 1894.

[SEAL.] W. A. RYAN, *Clerk*,
By R. W. JONES, *Deputy*.

(And endorsed on the back thereof:) Filed June 30, 1894. A. Reeves Ayres, clerk, by Samuel D. Bridges, deputy.

And afterwards, to wit: on the 3rd day of July, 1894, there was duly filed in said court, in said cause, a demurrer to the complaint in the words and figures as follows, to wit:

30 In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant. } Case No. 308.

Demurrer.

Defendant demurs to the plaintiff's complaint on file herein, for the reason that the complaint does not state facts sufficient to constitute a cause of action.

WALKER & FITCH,
Attorneys for the Defendant.

P. O. box address, 607–'9 Fidelity building, Tacoma, Pierce county, Washington.

TACOMA, WASH., *July 3rd*, 1894.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

GEORGE H. WALKER,
Of Counsel for Defendant.

(And endorsed on the back thereof:) In the United States circuit court, for the district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* The Provident Savings Life Assurance Society of N. Y., defendant. Demurrer. Received a copy of the enclosed demurrer, this 3rd day of July, 1894. Thos. Carroll & Palmer & Palmer, attorneys for plaintiff. Walker & Fitch, 607–609 Fidelity bldg., Tacoma, Wash., attorneys for defendant. Filed July 3rd, 1894. A. Reeves Ayres, clerk.

31 And afterwards, to wit: on the 16th day of July, 1894, there was duly filed in said court, in said cause an amended complaint in the words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Washington, Western Division, Holding Terms at Tacoma.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.
} Amended Complaint.

Amended Complaint.

The plaintiff, after leave first had and obtained amends her bill of complaint, and alleges:

I.

That the defendant is a corporation duly incorporated under the laws of the State of New York, and at all times mentioned in this complaint was such corporation, and as such was doing business at Tacoma, State of Washington.

II.

That on the 12th day of June, 1886, for and in consideration of thirty-two dollars and eighty-five (832.85) cents, and other good and sufficient consideration, the defendant, by and under the terms of a certain written contract commonly known and called a policy of life insurance, agreed, undertook and stipulated, for the use
32 and benefit of this plaintiff, to insure the life of one Thomas Lea Nixon, husband of this plaintiff, and did, then and there insure the life of said Thomas Lea Nixon, and thereby agreed and undertook to pay, in the event of the death of said Thomas Lea Nixon, to this plaintiff the sum of five thousand ($5,000.00) dollars, provided that such death should occur on or before noon on the 12th day of September, 1886; and the defendant in said written contract further stipulated, agreed and undertook, in consideration of certain quarterly payments to be made on the 12th days of September, December, March and June in each successive years, to extend and renew said policy of insurance for like periods of time, the said quarterly payments to be called for by the said society, to wit, the

defendant, which said contract of insurance is in the words and figures as follows, to wit:

No. 18647. The Provident Savings Life Assurance Society of New York $5,000.

In consideration of the application herefor, and which is made a part of this contract, and in consideration also of the payment of thirty-two dollars and eighty-five cents, doth hereby promise to pay to Cora E. Nixon, wife of Thomas Lea Nixon, the assured under this policy, or to the legal representatives or assigns of said assured, at its office, in the city of New York, the sum of five thousand dollars within ninety days after the acceptance of satisfactory proof of the death of Thomas Lea Nixon of Tacoma, county of Pierce,
33 and Washington Territory (the assured under this policy), provided such death shall occur before 12 o'clock noon on the 12th day of September, A. D. 1886.

And the said society further promises and agrees to renew and extend this insurance during each successive quarter year from date hereof, upon condition that the assured shall pay, on or before the twelfth day of September, December, March and June in each successive year during the continuance of this contract, the mortuary premium as called for by the society in accordance with the schedule rates for the actual age, printed on the back of this policy, and also an expense charge of seventy-five cents on each one thousand dollars insured herein, the payment of said quarterly mortuary premiums and the quarterly-expense charge being the consideration for the continuance of the insurance in (2) each successive quarter year, and provided also, that the conditions, stipulations and agreements upon which this policy is issued, shall be faithfully observed and faithfully carried out.

Premiums shall be paid as called for to the society, at its office, in the city of New York, on or before the dates herein specified.

Seventy-five per cent. of each mortuary premiums paid herein, will at once be deposited in trust in the Hanover National Bank of New York, or such other bank as may be designated by the society, and shall constitute the death fund, to be used solely in settlement of death claims. The residue of each mortuary premium will be deposited with the Farmers' Loan and Trust Company of New York, or invested in securities authorized by law for investments by trust companies, for the guaranty fund, additional to the capital,
34 and as a further protection to policy-holders. The full share of the surplus thus obtained, contributed by each policy remaining in force for ten years, and annually thereafter may be applied to lessen future premiums, or paid in cash.

Notice of the amount of the quarterly premium falling due and demand for its payment addressed to the within-named insured, at his post-office address, as it appears on the books of the society, deposited in the post-office, postage prepaid, is accepted by the assured as a sufficient personal notice and demand.

No assignment of this policy shall be valid unless it is in writing, and assented to in writing by said society, and any claim against

this society arising under this policy made by any assignee shall be subject to satisfactory proof of interest.

This society allows the insured under this policy to travel and visit within the following geographical limits, and to make voyages in first-class vessels to and from places within said limits, during the periods hereinafter respectively provided:

1—In the United States of America and its Territories except in places south of 32 north latitude, where at the time of such visit or travel yellow fever or cholera exists. Within the Dominion of Canada. In Europe north of the 42nd parallel of north latitude—during the entire year.

Examined. E.

2—Also on the continent of Europe, south of the 42d parallel of north latitude, and in Egypt, Palestine and Syria—during the months of Nov., Dec., Jan., Feb., Mar.

35 Subject to the following conditions:

That neither a state of war, nor cholera, yellow fever, or plague shall exist at any such place in foreign countries during the period when so resided in or visited.

Occupations and employments.—The insured shall not engage in blasting, mining, submarine labor, aeronautic travel or excursions, the manufacture, hauling or transportation of inflammable or explosive substances, service upon any railroad or any steamboat or other vessel, or in military or naval service of any kind during war, without the consent of the society in writing, under penalty of forfeiture of the policy.

Powers of agents.—No agent has power in behalf of the society to make or modify this or any contract of insurance, to extend the time for paying the premium, to issue a permit for residence, travel or occupation, or to bind the society by making any promise, or by receiving any representations or information not contained in the application for this policy.

This policy shall be void if the insured shall die by his own hand or act, or in consequence of a duel, or by the hands of justice, or in violation of, or attempt to violate, any criminal laws of the United States, or of any State or country in which the insured may be.

Should the within-named insured impair his health by an excessive use of stimulants or narcotics, the society reserves the right to cancel its agreement to continue and extend this insurance, by notice to him in the manner above specified, in respect to

36 notices of premiums, and agrees to repay to the assured, in that event, on demand at its office in the city of New York, his full share of the aforesaid guaranty fund.

Should claim be made under this policy by reason of death happening three or more years after its date, the foregoing conditions as to residence, occupation, and the payment of premiums and expense charges having been complied with, such claim is hereby declared to be incontestable.

In witness whereof, the Provident Savings Life Assurance Society of New York, has caused this policy to be signed by its president and secretary, at its office in the city of New York, on this the

twelfth day of June, A. D. one thousand eight hundred and eighty-six.

JOSEPH H. PARSONS,
Vice-President.

WILLIAM E. STEVENS, *Secretary.*

The following is written on the side of the foregoing policy:

"One hundred thousand dollars has been invested in U. S. bonds in trust for all the policy-holders, and has been deposited with the insurance department of the State of New York."

Maximum Mortuary Premiums for Each $1,000 *Insured.*

Quarterly renewable policies; other amounts in the same proportion.

Actual age.	For three months.
15–25	3 00
26	3 00
27	3 12
37 28	3 18
29	3 24
30	3 30
31	3 33
32	3 39
33	3 45
34	3 48
35	3 54
36	3 60
37	3 66
38	3 75
39	3 84
40	3 93
41	4 02
42	4 14
43	4 26
44	4 41
45	4 59
46	4 80
47	5 04
48	5 28
49	5 55
50	5 82
51	6 24
52	6 66
53	7 11
54	7 59
55	8 16
56	8 76
57	9 45
58	10 20
59	11 01
60	11 94

38 Rates for ages above sixty years will be furnished on application. The mortuary premiums, after the first payment, required to continue and extend insurance can never exceed the maximum quarterly rates named in the above table, but will be diminished by the surplus portion of the preceding premium not appropriated by reason of actual claim by death.

NEW YORK, ——, 18–.

Received from the Provident Savings Life Assurance Society of New York, — dollars in full for all claims under the within policy terminated by —— ——.

—— ——.

III.

That on the 16th day of April, 1891, said Thomas Lea Nixon died.

IV.

That during all the times herein mentioned, and down to the time of the death of the said Thomas Lea Nixon, the said plaintiff was his lawfully wedded wife.

V.

That during his lifetime said Thomas Lea Nixon duly performed all the conditions of said contract by him to be performed.

VI.

That on the — day of ——, 1891, this plaintiff duly notified said defendant that said Thomas Lea Nixon had died on the said 16th day of April, 1891, and at said time further requested de-
39 fendant to give necessary instructions and forms so that she might be able to make, execute and deliver to said defendant proofs of death that would be to it satisfactory; that on the — of —— said defendant declared to and informed said plaintiff in writing that said policy was no longer in force, and had lapsed at the time of the death of said Thomas Lea Nixon; that said defendant at said time and place, in writing, denied that it was liable to said plaintiff on said contract of insurance above set forth.

VII.

That the plaintiff is the Cora E. Nixon mentioned in said contract of insurance above set forth.

VIII.

That the plaintiff has performed all the conditions of said contract hereinbefore mentioned by her to be performed.

IX.

That said plaintiff is the owner and in possession of said contract of insurance, and that the same has not been paid nor any part thereof.

Plaintiff for her second cause of action, states:

I.

That the defendant is a corporation duly incorporated under the laws of the State of New York, and at all times mentioned in this complaint was such corporation, and as such was doing business at Tacoma, Washington.

40 II.

That on the 11th day of October, 1889, for and in consideration of two hundred and fifty-eight ($258.00) dollars, to it in hand paid by the plaintiff herein, and other good and sufficient consideration the defendant, under and by virtue of the terms of a certain written contract, commonly known and called a policy of life insurance, agreed, undertook and stipulated for the use and benefit of this plaintiff to insure the life of one Thomas Lea Nixon, husband of this plaintiff, and did then and there insure the life of said Thomas Lea Nixon for the period of one year from said date, and thereby agreed and undertook in the event of the death of the said Thomas Lea Nixon — to this plaintiff the sum of fifteen thousand ($15,000.00) dollars, provided that such death should occur before 12 o'clock noon of the 11th day of October, 1890; and the defendant in said written contract further stipulated, agreed and undertook in consideration of a certain annual payment, to be made on the 11th day of October in each successive year, to renew and extend said policy of insurance upon like conditions during each successive year of the life of the insured. A copy of said contract, or policy of life insurance is in the words and figures as follows, to wit:

The following paragraph was written on the side of the foregoing policy:

One hundred thousand dollars has been invested in bonds in trust for all the policy-holders, and has been deposited with the insurance department of the State of New York.

41 No. 32025. The Provident Savings Life Assurance Society of New York $15,000.

In consideration of the application herefor, and of the conditions and agreements on the back of this policy, all of which are a part of this contract, and in consideration also of the payment of two hundred and fifty-eight dollars and — cents,

Doth hereby promise to pay to Cora E. Nixon, wife of Thomas Lea Nixon (the beneficiary under this policy), or to the legal representatives or assigns of said beneficiary, at its office in the city of New York, the sum of

Fifteen thousand dollars.

(Less any indebtedness on account of this policy) within ninety days after acceptance of satisfactory proof, at its office in the city of New York, of the death of Thomas Lea Nixon of Tacoma, county of Pierce, and State of Washington (the insured under the policy),

provided such death shall occur before 12 o'clock, noon, on the eleventh day of October, A. D. 1890.

And the said society further agrees to renew and extend this insurance upon like conditions during each successive year of the life of the insured from said date hereof, upon the payment on or before the eleventh day of October in each successive year, of the annual premium for the actual age attained, in accordance with the schedule rate printed on the next page of this policy for each one thousand dollars insured, except as reduced by the application of the surplus and guaranty fund.

Examined. H.

42 Subject to the stipulations regarding payment of premiums and extra-hazardous occupations claim under this policy by death occurring two or more years after its date will be incontestable except for fraud in obtaining this policy.

In witness whereof, the Provident Savings Life Assurance Society of New York, has caused this policy to be signed by its president and secretary, at its office in the city of New York, on this, the eleventh day of October, A. D. one thousand eight hundred and eighty-nine.

SHEPPARD HOMANS, *President.*

L. R.
A.

WM. E. STEVENS, *Secretary.*

Conditions and Agreements Referred to on the Preceding Page of this Policy.

SECTION 1. This policy does not go into effect until the first premium has been actually paid. No agent is or will be authorized to make, alter or discharge this contract, or to waive any forfeiture thereof, or to extend this insurance, or to grant permits, or to receive for premiums, anything but cash.

SECTION 2. Premiums are due and payable to the society, at its office in the city of New York, but may be paid to an authorized agent on or before the dates when due, but only in exchange for a receipt signed by the president and secretary, and countersigned by the agent.

SECTION 3. The annual premiums of this policy may, by
43 consent of the society, be paid by the half-yearly or quarterly equivalent as indicated below, if desired, but failure to pay when due any such semi-annual or quarterly equivalent, will then terminate the policy. In case of claim by death, any unpaid portion of the annual premium will be deducted from the sum insured.

SECTION 4. After deducting the expense charge, which is limited to four dollars per annum, on each one thousand dollars insured, the society agrees to appropriate the residue of each renewal premium paid upon this and upon other similar policies, as follows: So much thereof as is necessary for its share of death losses will be deposited in such bank or banks as shall be designated by the di-

rectors, as a death fund, to be used solely in settlement of death claims. The remainder thereof will be deposited in trust as a guaranty fund, in the Farmers' Loan and Trust Company, or in such other depositary as shall be designated by the directors, and will be applied to offset the otherwise unavoidable increase in the rates of premiums on account of advancing age. In case of death the unused surplus of the guaranty fund contributed by this policy will be paid as an addition to the sum insured. Should the policy, after five full years' premiums have been paid, be terminated solely by the non-payment of any stated premiums when due, said unused surplus may be applied to purchase paid-up insurance, provided application be made therefor while this policy is in full force and effect, otherwise said surplus will be applied as a single premium to renew and extend the full amount of this insurance for so long a time as said surplus, so used, will purchase.

44 SECTION 5. Assignments of this policy must be in writing, and notice thereof given to the society, and any claim arising under this policy shall be subject to satisfactory proof of interest.

SECTION 6. Should the within-named insured reside or travel in any region where the climate is extra hazardous or should he engage in any extra-hazardous occupation, the society reserves the right to adjust the dividends on this policy in accordance with the extra mortality in such class or classes.

Rates of Premium to Renew and Extend Insurance of $1,000.

Other amounts in the same proportions.

Age actually attained.	Annual.	Half-yearly equivalent.	Quarterly equivalent.
15.25	13.75	7.15	3.72
26	14.00	7.28	3.80
27	14.25	7.41	3.85
28	14.50	7.54	3.92
29	14.75	7.67	3.98
30	15.00	7.80	4.06
31	15.25	7.94	4.13
32	15.50	8.06	4.19
33	15.70	8.16	4.24
34	15.88	8.26	4.30
35	16.04	8.34	4.34
36	16.24	8.44	4.39
37	16.44	8.55	4.45
38	16.68	8.67	4.50
39	16.92	8.80	4.58
45 40	17.20	8.94	4.65
41	17.48	9.09	4.75
42	17.80	9.26	4.82
43	18.16	9.44	4.91
44	18.60	9.67	5.03

Age actually attained.	Annual.	Half-yearly equivalent.	Quarterly equivalent.
45	19.04	9.90	5.15
46	19.60	10.19	5.30
47	20.20	10.50	5.46
48	20.88	10.86	5.65
49	21.72	11.30	5.88
50	22.64	11.77	6.12
51	23.68	12.31	6.40
52	24.84	12.92	6.72
53	26.12	13.58	7.06
54	27.60	14.35	7.47
55	29.24	15.00	7.80
56	31.00	16.12	8.38
57	33.25	17.30	9.00
58	35.75	18.60	9.67
59	38.50	20.02	10.41
60	45.00	21.58	11.22
61	49.00	23.40	12.17
62	53.00	25.78	13.41
63	57.50	27.56	14.33
64	60.76	29.90	15.55
65	64.96	31.60	16.43
66	70.72	33.78	17.57
67	77.16	36.77	19.13
68	84.26	40.12	20.96
69	92.12	43.80	22.78
70		47.90	24.91

46 NOTE.—Provided the mortality in this society shall be as favorable in the future as it has been in the past in the largest and best of other companies (thus far it has been more favorable), this insurance will be extended and renewed during the whole expectation or probable lifetime of the insured, at the rate of premium charged for the first year only of the policy.

III.

That on the 16th day of April, 1891, said Thomas Lea Nixon died.

IV.

That during all the times herein mentioned, and down to the time of the death of said Thomas Lea Nixon, the said plaintiff was his lawfully wedded wife.

V.

That during the lifetime of said Thomas Lee Nixon he duly performed all the conditions of said contract by him to be performed.

VI.

That on or about the 1st day of June, 1891, this plaintiff duly notified said defendant that said Thomas Lea Nixon had died on

the said 16th day of April, 1891, and at said time further requested defendant to give necessary instructions and forms so that she might be able to make, execute and deliver to said defendant proofs of death that would be to it satisfactory that on the — day of —— said defendant declared to and informed said plaintiff in writ-
47 ing that said policy was no longer in force, and had elapsed at the time of the death of the said Thomas Lea Nixon; that said defendant at said time and place, in writing, denied that it was liable to said plaintiff on said contract of insurance above set forth.

VII.

That the plaintiff is the Cora E. Nixon mentioned in said contract of insurance above set forth.

VIII.

That the plaintiff has performed all the conditions of said contract hereinbefore by her to be performed.

IX.

That said plaintiff is the owner and in possession of said contract of insurance, and that the same has not been paid nor any part thereof.

Wherefore, plaintiff prays judgment against the defendant in the sum of $5,000, with interest thereon at the rate of 8 per cent. per annum from the 16th day of April, 1891, and for the sum of $15,000, with interest thereon at the rate of 8 per cent. per annum, from said 16th day of October, 1891, and for costs and disbursements of this action.

CARROLL, WARBURTON & PALMER,
Solicitors for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Cora E. Nixon, upon her oath, deposes and says: That she is the plaintiff in the foregoing cause of action; that she has heard read the foregoing amended complaint, knows the contents thereof and believes the same to be true.

CORA E. NIXON.

48 Subscribed and sworn to before me this 16th day of July, 1894.

[NOTARIAL SEAL.] GEO. L. PALMER,
Notary Public, Residing at Tacoma, Washington.

(And endorsed on the back thereof:) No. 308. In the U. S. circuit court, district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, defendant. Amended complaint. Filed July 16, 1894. A. Reeves Ayres, clerk. "Original." Carroll, Warburton, Leroy A. Palmer and George L.

Palmer, 934½ C street, rooms 1, 2 and 3, Tacoma, Wash., attorneys for pl'ff. Cr. $10.

And afterwards, to wit: on the 21st day of July, 1894, there was duly filed in said court, in said cause, a demurrer to the amended complaint in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant.	Case No. 308. Demurrer to Amended Complaint.

Demurrer to Amended Complaint.

Defendant demurs to plaintiff's amended complaint on file herein, for the reason that said amended complaint does not state facts sufficient to constitute a cause of action.

WALKER & FITCH,
Attorneys for the Defendant.

P. O. address, 607–'9 Fidelity building, Tacoma, Pierce county, Washington.

49 TACOMA, WASH., *July* 17, 1894.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

GEORGE H. WALKER,
One of the Attorneys for Defendant.

(And filed on the back thereof:) In the United States circuit court for the district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* The Provident Savings Life Assurance Society, defendant. Demurrer. Received a copy of the enclosed, this 21st day of July, 1894. Carroll *et al.*, attorneys for pl'ff. Walker & Fitch, att'ys def't. Filed July 21, '94. A. Reeves Ayres, clerk.

And afterwards, to wit: on the 29th day of August, 1894, there was duly filed in said court in said cause a stipulation that demurrer be overruled in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY.	Case No. 308.

Stipulation that Demurrer to Amended Complaint be Overruled, etc.

It is hereby stipulated and agreed by and between Messrs. Carroll, Warburton and Palmer, attorneys for the pl'ff, and Messrs Walker & Fitch, attorneys for the def't, as follows:

50 First. That defendant's demurrer to plaintiff's amended complaint on file herein be overruled, and

Second. That defendant have up to and including the tenth day of September, 1894, to answer said amended complaint.

Dated August 29, '94.

CARROLL, WARBURTON & PALMER,
Att'ys for Pl'ff.
WALKER AND FITCH, *Att'ys for Def't.*

(And filed on the back thereof:) 308. U. S. circuit court. Cora E. Nixon *vs.* Provident Savings Life Assurance Society. Stipulation. Filed Aug. 29, 1894. A Reeves Ayres, clerk, by Sam'l D. Bridges, dep.

And afterwards, to wit: on the 14th day of September, 1894, there was duly filed in said court, in said cause an answer to the amended complaint in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant. } Case No. 308.

Answer to Amended Complaint.

The defendant answering the plaintiff's complaint in respect to the first cause of action set forth:

51 First. Admits all the allegations of the first paragraph of the first cause of action in said complaint.

Second. Admits the making of the certain contract of insurance alleged in the second paragraph of the first cause of action in said complaint, and admits that the copy of said contract therein set forth is correct so far as the same is given, but the defendant alleges that a portion of said contract, to wit: the application is not therein set forth, and that a copy of part one of said application, marked "Exhibit A" is annexed to this answer and constitutes a part thereof.

Third. As to the allegations constituting the third, fourth and seventh paragraphs of the first cause of action in plaintiff's complaint, defendant denies any knowledge or information thereof sufficient to form a belief.

Fourth. Defendant denies the allegations constituting the fifth paragraph of the first cause of action in plaintiff's complaint.

Fifth. Denies the allegations contained in the sixth paragraph of the first cause of action in plaintiff's complaint, except that defendant admits that at all times it has denied its liability to plaintiff upon the contract of insurance set forth in the first cause of action in said complaint.

Sixth. Defendant denies the allegation constituting the eighth paragraph of the first cause of action in the plaintiff's complaint.

Seventh. Defendant admits the allegation contained in the last clause of the ninth paragraph of the first cause of action in plaintiff's complaint, and as to the other allegations therein
52 contained, it denies any knowledge or information thereof sufficient to form a belief.

Eighth. For a separate and distinct defense to the plaintiff's first cause of action, defendant alleges:

That on or about the 12th day of July, 1890, through a clerical error in the office of the defendant, the notice of premium then due on said policy was made too large by the sum of one and $\frac{25}{100}$ dollars, which excess was then paid to defendant, and that thereafter defendant having been informed of said error by its agent in Tacoma, agreed to deduct the amount of said excess payment from the next quarterly premium to become due on said policy on the 12th day of September, 1890, and defendant alleges that it did so deduct the same, and that on the 4th day of August, 1890, it caused a notice of the premium to become due on said policy of life insurance September 12th, 1890, to be duly deposited in the post-office in the city of New York, postage prepaid, addressed to the said Thomas Lea Nixon, at Tacoma, in the State of Washington, which was his last known address and place of residence as appeared on the books of the defendant, all in conformity to the laws of the State of New York; that the amount called for by said notice was reduced from the total premium of seventeen and $\frac{10}{100}$ dollars, which would otherwise have been due, by deducting therefrom the sum of one and $\frac{25}{100}$ dollars formerly paid in excess, as aforesaid, leaving the balance of fifteen and $\frac{85}{100}$ dollars ($15.85), which was the sum called for in said notice, and that defendant sent its receipt, properly signed, for said sum of fifteen and $\frac{85}{100}$ dollars
53 ($15.85) to the Traders' Bank of Tacoma to be surrendered to said insured upon the payment thereof.

That the defendant, answering plaintiff's complaint in respect to the second cause of action therein set forth,

First. Admits all the allegations of the first paragraph of the second cause of action in said complaint.

Second. Admits the taking of a second contract of insurance alleged in the second paragraph of the second cause of action in said complaint, and admits that the copy of said contract therein set forth is correct, so far as the same is given, but defendant alleges that a portion of said contract, to wit: the application, is not therein set forth, and that a copy of part one of said application, marked Exhibit "B," is annexed to this answer, and constitutes a part thereof.

Third. As to the allegations constituting the third, fourth and seventh paragraphs of the second cause of action in plaintiff's complaint, the defendant denies any knowledge or information thereof sufficient to form a belief.

Fourth. Defendant denies the allegation constituting the fifth paragraph of the second cause of action in the plaintiff's complaint.

Fifth. Denies the allegations contained in the sixth paragraph of the second cause of action in the plaintiff's complaint except that defendant admits that at all times it has denied its liability to plaintiff under the contract of insurance set-forth in the second cause of action in said complaint.

Sixth. Defendant denies the allegations constituting the eighth paragraph of the second cause of action in plaintiff's complaint.

54 Seventh. Defendant admits the allegation contained in the last clause of the ninth paragraph of the second cause of action in the plaintiff's complaint; and as to the other allegations therein contained, it denies any knowledge or information thereof sufficient to form a belief.

Eighth. For a separate and distinct defense to the second cause of action in plaintiff's complaint, defendant alleges:

That on the 8th day of September, 1890, it caused a notice of the premium to become due on said last-named policy on October 11th, 1890, to wit: the sum of two hundred sixty-two and $\frac{20}{100}$ ($258.00) to be deposited in the post-office in the city of New York, postage prepaid, addressed to said Thomas Lea Nixon at Tacoma, State of Washington, which was his last known address and place of residence as appeared from the books of the defendant; all in conformity to the laws of the State of New York; and further, that defendant sent its receipt, properly signed, for said sum of $262.20 to the Traders' Bank of Tacoma to be surrendered to said insured upon the payment thereof.

Wherefore, said defendant prays for a dismissal of plaintiff's complaint herein with its reasonable costs and expenses in this action.

WALKER & FITCH,
Attorneys for the Plaintiff.

P. O. address: 607–'9 Fidelity building, Tacoma, Pierce county, Wash.

55 PART I.

Application for Assurance in the Provident Savings Life Assurance Society of New York.

1. Name of the person whose life is proposed to be assured. Write the name in full. Thomas Lea Nixon. Occupation—loan broker. Residence place, Tacoma, county Pierce, Washington Territory. Where shall notices of premiums be addressed? Tacoma, Wash. Ter.

2. How much assurance is desired? A. Ans. $5,000 *dollars.*

3. What kind of a policy is desired? A. Ans. Strai-t life. B. Are payments of premiums to be made annually, semi-annually or quarterly? B. Ans. Quarterly.

4. Are you now assured in this society? A. Ans. No. Globe Reserve, $5,000 ac. B. What amounts are now assured on your

life, and in what companies? Ans. B. N. Y. Mutual, $2,000. Travelers, $3,000 ac.

5. A. Has any company ever declined to grant assurance on your life? A. Ans. No. B. Has any company ever postponed the consideration of your application, or modified it with respect to amount of assurance, term of years, or in any manner whatever? B. Ans. No. C. If so, what company? C. Ans. ——. D. When? D. Ans. ——. E. Why? E. Ans. ——.

6. Give the date and place of your birth. Year, 1849. Month, May, day, 15th. State or country, Pennsylvania.

7. A. Age nearest birthday? Ans. 37. Are you married? Ans. Married.

56 8. Name and residence of one or more intimate friends? J. M. Steele, Tacoma, W. T.

9. For whose benefit is the assurance to be effected? (Write all names in full.) Cora Evelyn Nixon. Relationship to person insured—wife. Residence place, Tacoma, county Pierce, W. T. Occupation—housekeeper.

10. It is hereby affirmed and declared by Thomas Lea Nixon, the applicant above named, and also by the person whose life is proposed for assurance, that the answers to all of the above questions, also those made to the medical examiner, are true and correct, and that no intentional omission, concealment or mental reservation has been made of any material facts or circumstances relating to the past or present health, habits or condition, or the family history of the above named.

And it is hereby expressly stipulated and agreed that the above application and this declaration with the policy issued thereon shall form the contract between the above-named persons and the said Provident Savings Life Assurance Society of New York, and that if any misrepresentations or fraudulent or untrue answers have been made, or if any facts which should have been stated to the society have been suppressed therein, or if any violation of the covenants, conditions or restrictions of the policy (should one be issued) shall occur, or any omission or neglect to make any payment, as required by the conditions of the policy, that then in either event, the said policy shall become and be null and void, and all moneys which shall have been paid shall be forfeited to the society for its sole use and benefit.

57 And the said person whose life is proposed for assurance, further declares that he is not now afflicted with any disease or disorder, that he does not now, and that he will not practice any pernicious habit that obviously tends to the shortening of life.

Dated at Tacoma, W. T., this 12th day of July, 1886.

Signature of beneficiary—Cora Evelyn Nixon.

Signature of person assured—Thomas Lea Nixon.

In presence of—R. W. Casewell, signed.

The following was written on the side of the foregoing application, "Acct. T. L. Nixon."

PART I.

Application for Assurance in the Provident Savings Life Assurance Society of New York.

1. Full name of the person upon whose life the insurance is proposed—Thomas Lea Nixon. Specific occupation—capitalist. Residence—Place, Tacoma; county, Pierce; State, Washington.

2. A. Where shall notices of premiums be addressed?—A. Ans. ——. B. Are you married?—B. Ans. ——.

3. A. Are you now insured in this society?—A. Ans. Yes. B. If so, for what amount?—B. Ans., $5,000. C. If now insured, state in what companies or organizations, the kinds of policies, and their respective amounts.—C. Ans., Mutual, $2,000; Tra. Life, $5,000; Equitable, $10,000; P. Mutual, $10,000.

4. Give the date and place of your birth—Year, 1849; month, May; day, 15. State or county, Pa. Age nearest birthday, 40.

5. Full name of the beneficiary for whom the insurance is
58 desired—Cora Evelyn Nixon. Relationship to the insured—wife. Residence—Place, Tacoma; county, Pierce; State, Washington. Amount desired, $15,000.

6. I hereby apply to the Provident Savings Life Assurance Society of New York, for an insurance of fifteen thousand dollars, payable after my death, upon the level renewal-term plan with dividends applied participating premiums, payable annually in behalf of and for the benefit of Cora E. Nixon, my wife. I declare that I am, to the best of my knowledge and belief, in sound physical condition, and that I am and have been for the past years engaged in business as real estate & Co. It is jointly agreed by myself and all parties in interest, or who may become interested, as follows: That I will not, for two years from date, visit or reside in any tropical climate without the written consent of the society; that I will not at any time personally engage in blasting, labor in mines, submarine labor, aëronautic ascensions, the manufacture or handling of highly inflammable or explosive substances, or service upon any vessel or railroad, or in any military or naval service in time of war, without first obtaining, in each and every such case, the written consent of the society; that self-destruction, whether sane or insane, within one year from the date of the policy herein applied for, is a risk not assumed by the society; that death resulting from violation of law, or in the attempt to violate law is a risk not at any time assumed by the society under the policy applied for; that the proofs of death required
by the policy applied for shall be made upon the blank
59 form prescribed by the society, and shall include all the information required thereby; that all provisions of law forbidding any physician who has or may have attended me from disclosing any or all information which he acquired by such attendance, are hereby expressly waived; that any policy based upon this application shall at all times and places be construed to be a contract made in the State of New York. We further declare and

warrant, jointly and severally, that all the foregoing statements and representations, as well as those made or to be made to the medical examiner, or in any certificate of health hereafter given to the society by me, are and shall be true and shall be the basis of the contract with the society if a policy be issued or renewed thereon, and that, if any untrue or fraudulent statement or representation shall have been made, or if at any time any covenant, condition or agreement herein made shall be violated, said policy and insurance shall be null, void and of no effect.

7. What cash premium has been paid to make the insurance under this application binding from this date, providing the risk is assumed by the society? A. — annual premium of $— has been paid upon condition that if the risk is not assumed by the society, this sum is to be returned in accordance with the provisions of the society's official binding receipt No. — given as a voucher for said payment.

Dated at Tacoma, this 20th day of Sept., 1889, in presence of R. B. Parrott, signed.

60 Signature of the party or parties for whose benefit the insurance is to be effected. (Write the names in full.) Cora Evelyn Nixon, by Thomas L. Nixon.

NOTE.—In case of husband and wife, or parent and children, the former may sign for the latter, thus: Mary Smith, by John Smith.

Signature of the party on whose life insurance is applied for. (Write the name in full.) Thomas Lea Nixon. Signed.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Charles S. Tourte*le*llot being first duly sworn deposes and says: That he is the general agent of The Provident Savings Life Assurance Society of New York, the defendant in the above-entitled action, that he has read the foregoing answer, that he knows the contents thereof, and that he believes the same to be true and that the reason this verification is made by this affiant is that the defendant herein is not a resident of this State. C. S. TOURTELLOT.

Subscribed and sworn to before me this 11th day of September, 1894.

JAMES M. HARRIS,
Notary Public, Residing at Tacoma,
Pierce County, State of Washington.

(And endorsed on the back thereof:) No. 308. In the U. S. circuit court for the district of Washington, in and for the county of Pierce. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society of N. Y., defendant. Answer. Received copy of the

61 enclosed answer this 11th day of September, 1894. Carroll, Palmer & Warburton, attorneys for plaintiff. Walker & Fitch, 607–609 Fidelity Trust building, Tacoma, Washington, attorneys for defendant. Filed Sept. 11, 1894. A. Reeves Ayres, clerk, by Sam'l D. Bridges, dep.

And afterwards, to wit, on the 19th day of October, 1894, there was duly filed in said court, in said cause a reply in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.
} Case No. 308. Reply.

Reply.

Comes now the above-named plaintiff and in reply to the separate and affirmative defense to said plaintiff's first cause of action, admits and on her own behalf alleges that said Thomas L. Nixon on or about the 12th day of June, 1890, paid to defendant one dollar and twenty-five cents, more than defendant was entitled to as a quarterly premium due on that day, and that defendant agreed with said Thomas L. Nixon, to apply said one dollar and twenty-five cents on the next quarterly premium due, or to become due, and that thereafter on the 12th day of Sept., 1890, said defendant did apply
62 said one dollar and twenty-five cents on the quarterly premium claimed by defendants to be due on that day, and plaintiff further alleges notwithstanding said agreement and notwithstanding the fact that said defendant did apply said one dollar and twenty-five cents on the payment of said quarterly premium, said defendant wrongfully and contrary to said agreement declared the policy forfeited on said 12th day of Sept., 1890.

As to each and every other allegation contained in said distinct and affirmative defense to said first cause of action contained in paragraph 8, plaintiff denies that she has knowledge or information sufficient to form a belief and therefore denies each and every allegation in said paragraph contained.

Reply to Affirmative Defense, Second Cause of Action.

The plaintiff replying to the distinct, separate and affirmative defense to the second cause of action, contained in the 8th paragraph thereof, says she has no knowledge or information sufficient to form a belief as to the matters, or either or any of them, in said paragraph alleged, and therefore denies each and every allegation in said paragraph contained.

Wherefore, plaintiff prays that she may have the relief set forth in her complaint.

PALMER, CARROLL & WARBURTON,
Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Cora E. Nixon, being first duly sworn, on her oath deposes
63 and says, that she is the plaintiff mentioned in the foregoing reply, that she has read the same, knows the contents thereof, and believes the same to be true.

CORA E. NIXON.

Subscribed and sworn to before me, this 16th day of October, 1894.

[NOTARIAL SEAL.] GEO. L. PALMER,
Notary Public in and for the State of Washington,
Residing at Tacoma.

(And endorsed on the back thereof:) No. 308. In United States circuit court, Wash. district, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, def'ts. Reply. Received a copy within reply, this — day of Oct., 1894. Att'ys for def't, Palmer, Carroll & Warburton. Att'ys for pl'ff, Walker & Fitch. Filed October 19th, 1894. A. Reeves Ayres, clerk, by Sam'l D. Bridges, dep.

And afterwards, to wit: on the 19th day of October, 1894, there was duly filed in said court, in said cause, interrogatories to be answered by defendant in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant. } No. 308.

Interrogatories.

To the above-named defendant and its attorneys:

Comes now the above-named plaintiff and submits the
64 following interrogatories to be answered by defendant according to the statute for such cases made and provided.

1. Did defendant at any time in the year 1891 receive a letter or notice from one Thomas Carroll of Tacoma, Washington, representing himself to be the attorney of Cora E. Nixon and acting for her, stating among other things that Thomas L. Nixon had died in April, 1891, and asking for instructions as to preparing proofs of death, etc.?

2. If defendant answers the foregoing interrogatory or any part of it in the affirmative, please attach the original or a copy of the same to your answer.

3. Please state whether defendant answered such letter, giving as near as possible the date and to whom the same was addressed.

4. Please attach to the answer to these interrogatories the original premium receipt, or a true copy thereof, if any, mailed by defendant to the Traders' Bank of Tacoma, for the premium to be due in September, 1890, on policy No. 18647, also on policy No. 32025 claimed to be due October 11, 1890.

5. Please state the exact date of each and every notice of each quarterly premium notice that the defendant mailed to Thomas L. Nixon on policy No. 18647 in the years 1888, 1889, and 1890, and attach copies of the same to this answer.

Respectfully submitted.

PALMER, CARROLL & WARBURTON,
Attorneys for Plaintiff.

(And endorsed on the back thereof:) No. 308. In United
65 States circuit court, Wash. district, western division. Cora E. Nixon, pl'ff, *vs.* Provident Savings Life Assurance Society, def'ts. Interrogatories. Received a copy of the within interrogatories this — day of Oct., 1894. Attorneys for def't, Palmer & Carroll & S. Warburton. Att'ys for pl't'f, Tacoma, Washington, Walker & Fitch. Filed October 19, 1894. A. Reeves Ayres, clerk, by Sam'l D. Bridges, dep.

And afterwards, to wit: on the 9th day of November, 1894, there was duly filed in said court, in said cause defendant's answers to plaintiff's interrogatories in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Answers to Plaintiff's Interrogatories.

STATE OF NEW YORK,
County and City of New York, } *ss:*

WILLIAM E. STEVENS, being duly sworn, says he is the secretary of the defendant herein, The Provident Savings Life Assurance Society, and that the said defendant by him its said secretary makes answer to plaintiff's interrogatories as follows, to wit:

Answer to first interrogatory. On the 3d day of August,
66 1891, defendant received a letter from Thomas Carroll dated at Tacoma, Washington, which letter represented and stated just what is shown in the copy thereof, which is annexed hereto in compliance with question 2.

Answer to second interrogatory. Copy requested is attached hereto and marked Exhibit A.

Answer to third interrogatory. Defendant answered the letter re-

ferred to on August 3d, 1891, and directed such answer to Thomas Carroll, Tacoma, Wash.

Answer to fourth interrogatory. Exact copies of the premium receipts referred to in question 4 are attached hereto and marked Exhibits B 1 and B 2.

Answer to fifth interrogatory. It is impossible for defendant to give the dates upon which notices of premiums upon policy No. 18657, due prior to Dec. 12th, 1889, were mailed, or to furnish copies of such notices. The notice of premium due Dec. 12th, 1889, was dated and mailed Nov. 9th, 1889; of premium due March 12th, 1890, was dated and mailed Feb. 8th, 1890; of premium due June 12th, 1890, was dated and mailed May 9th, 1890; and of premium due Sept. 12th, 1890, was dated and mailed Aug. 4th, 1890. All these notices were addressed to Thos. L. Nixon, Esq., Tacoma, Wash., that being the last-known post-office address of said Nixon. Copies thereof are attached hereto and marked Exhibit "C 1, C 2, C 3, C 4."

WM. E. STEVENS.

Subscribed and sworn to before me this 30th day of October, 1894.

[NOTARIAL SEAL.] T. H. STEVENS,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

67 EXHIBIT "A."

Law office of Thomas Carroll, rooms 2, 3, 4, 7, 5, Ouimette block, No. 952 Pacific Ave.

TACOMA, WASH., *July* 27, 1891.

Provident Savings Life Insurance Society.

GENTLEMEN: Thos. L. Nixon, holder of policy No. 32025, and also policy No. 18647, in your Co., died, and his widow, Cora E. Nixon, has left the matter of his claim against the company with me to look after. Will you please inform me if the company will pay premium upon proof of death? And if so, send necessary blanks, etc.

Respectfully,
(Signed) THOS. CARROLL.

EXHIBIT "B 2."

The Provident Savings Life Assurance Society of New York, Equitable building, 120 Broadway, New York city.

Received two hundred and fifty-eight dollars being the net premium required to renew and extend the assurance under policy No. 32025 on the life of Thomas L. Nixon, due October 11th, 1890.

WM. E. STEVENS, *Secretary.*

Net annual premium $258.

Form 261.

Notice to Policy-holders.

All premiums are due and payable at the society's office in New York, but collecting agents having the proper renewal receipts, signed by the president, vice-president, secretary or assistant
68 secretary, are authorized to receive premiums not overdue on countersigning said renewal receipts as evidence of payment.

The agreement is mutual (see application and policy) that, unless the premium is paid on, or before the day it becomes due, the policy is forfeited and void.

Should this policy be restored at any time by acceptance of premium, after the same is due and payable, such restoration shall not create an obligation, or precedent, for waiving any conditions of the policy in regard to subsequent non-payment of any premium on the day it falls due.

No person except the president, vice-president, secretary or assistant secretary is authorized to make, alter or discharge contracts, or waive forfeitures.

EXHIBIT "B 1."

The Provident Savings Life Assurance Society of New York, Equitable building, 120 Broadway, New York city.

Received fifteen and $\frac{85}{100}$ dollars, being the net quarterly premium required to renew and extend the insurance under policy No. 18647 on the life of Thomas L. Nixon, due September 12th, 1890.

WM. E. STEVENS, *Secretary.*

Quar. expense charge		$2 50
Quar. mortuary premium	$20 10	
Less return premium	6 75	
		13 35
		$15 85

69 Form 200.

Notice to Policy-holders.

All premiums are due and payable at the society's office in New York, but collecting agents having the proper renewal receipts, signed by the president, vice-president, secretary or assistant secretary, are authorized to receive premiums not overdue, on countersigning said renewal receipts as evidence of payment.

The agreement is mutual (see application and policy) that, unless the premium is paid on or before the day it becomes due, the policy is forfeited and void.

Should this policy be restored at any time by acceptance of premium, after the same is due and payable, such restoration shall not create an obligation or precedent for waiving any conditions of the policy in regard to subsequent non-payment of any premium on the day it falls due.

No person except the president, vice-president, secretary or assistant secretary is authorized to make, alter or discharge contracts, or waive forfeitures.

EXHIBIT "C 1."

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Nov.* 9, 1889.

Mr. Thos. L. Nixon:

Please take notice that the insurance under policy No. 18647 in this society expires by its terms on the 12th day of Dec. next.

70 Take notice also that said insurance may be renewed by the payment on, or before said date of $15.30 to the secretary of this society at its office in the city of New York; and if not so paid said policy and all payments thereon will become forfeited and void. Such payment however, will not renew said insurance if the last preceding premium was not duly paid, or if for any reason said policy be not in force upon the aforesaid date of expiration.

WM. E. STEVENS, *Secretary.*

N. B.—All premiums are due at the office of the secretary in the city of New York; but, for the convenience of policy-holders, payments may be made on, or before the due dates to an authorized agent having in his possession the society's receipt therefor signed by the president or secretary.

Agents are forbidden to receive overdue premiums except within thirty days of due date, and upon receipt of a certificate of good health.

Please inform the society of any change in your address, or in the address to which you desire notices of premiums payable to be sent.

Office hours, 10 a. m. to 4 p. m. Form 241.

If not called for in five days return to Provident Savings Life Assurance Society of New York.
P. O. box 787, N. Y. (Stamp)

THOS. L. NIXON, Esq.,
Tacoma, Wash.

71 EXHIBIT "C 2."

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Feb'y* 8, 1890.

Take notice, that a premium of $15.30, required to renew policy No. 18647 in this society, will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 29 Broadway, in the city of New York, on the 12th day of M'ch, 1890, and if not paid on or before said date,

the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society, in the city of New York, but, for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS.

N. B.—Agents are forbidden to receive overdue premiums, except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

72 Form 248.

If not called for in five days, return to Provident Savings Life Assurance Society of New York.
P. O. box 787, N. Y.

THOS. L. NIXON, Esq.,
Tacoma, Wash.

EXHIBIT "C 3."

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *May 9th*, 1890.

Take notice that a premium of $18.35, required to renew policy No. 18647, in this society, will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 29 Broadway, in the city of New York, on the 12th day of June, 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society, in the city of New York, but for the convenience of policy-holders, payments may be made on or before due, dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

73 N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

If not called for in five days, return to Provident Savings Life Assurance Society of New York.
P. O. box 787, N. Y.

THOS. L. NIXON, Esq.,
Tacoma, Washington.

EXHIBIT "C 4."

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Aug.* 4, 1890.

Take notice that a premium of $15.85 required to renew policy No. 18646 in this society will, if such policy be in force on that day, but not otherwise become due and payable to the secretary of the society at its office, No. 29 Broadway, in the city of New York on the 12th day of Sept. 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

74 Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

If not called for in five days, return to Provident Savings Life Assurance Society of New York.
P. O. box 787, N. Y.

THOS. L. NIXON, Esq.,
Tacoma, Wash.

(And endorsed on the back thereof:) No. 308. In the United States circuit court for the district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, defendant. Answers to plaintiff's interrogatories. Filed Nov. 9, 1894. A. Reeves Ayres, clerk. By Sam'l D. Bridges, deputy. Walker & Fitch, 607–'9 Fidelity building, Tacoma, Washington, attorneys for defendant. Received copy of within answer to plaintiff's interrogatories this 9th day of November, 1894. Thos. Carroll, att'y for pl'ff.

And afterwards, to wit: on the 21st day of February, 1895, there was duly filed in said court, in said cause, an amended reply in the words and figures as follows, to wit:

75 In the United States Circuit Court of the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Case No. 308.
Reply.

Amended Reply.

Comes now the plaintiff, and for her amended reply to defendant's answer and separate and distinct answer to plaintiff's first cause of action, says:

1.

Plaintiff admits that $1.25 was paid by said Thos. Lea Nixon, in excess of the true sum said Thos. Lea Nixon should have paid upon the premium falling due on the 12th day of July, 1890, and plaintiff alleges the fact to be that $1.25 was paid by said Thos. Lea Nixon more than he should have paid at that time, and that said Thos. Lea Nixon demanded the repayment of said sum, but that defendant neglected and refused to return said sum so overpaid, and then and there it was agreed between defendant and said Thos. Lea Nixon, to apply said overpayment upon the contract of insurance, in part payment of the next quarterly premium, set out in paragraph two of plaintiff's complaint. And thereafter, on the 12th day of September, 1890, said defendant did apply said one dollar and twenty-five cents in part payment of the quarterly
76 premium, claimed by defendants to be due on that day. And notwithstanding said agreement, and notwithstanding the fact that said defendant did apply said one dollar and twenty-five cents on the payment of said quarterly premium, said defendant wrongfully and contrary to said agreement declared the policy forfeited on said 12th day of September, 1890.

2.

That defendant failed and neglected to inform said Thomas Lea Nixon or this plaintiff the true amount so overpaid, or of the amount due upon said policy for the quarter ending December 12th, 1890.

3.

That plaintiff has neither knowledge nor information sufficient to form a belief as to whether defendant ever mailed to the said Thomas Lea Nixon, any notice of the amount due upon said policy Sept. 12th, 1890, and that if the notice claimed to have been mailed, was mailed or received by him, said notice was in violation of defendant's agreement above set forth.

4.

Plaintiff denies that any notice as provided by the laws of the State of New York, was ever served upon or mailed to said Thomas Lea Nixon.

5.

That said contract of insurance was made, executed and delivered under the laws of the State of New York, and that under said laws, said insurance policy could not be forfeited or declared lapsed, save by compliance therewith; and that from time to time
77 defendant waiving strict compliance with the terms of said policy received and accepted sums due as premiums without objection long after the same became due, and thereby induce- said intestate and this plaintiff to believe that a strict compliance with the terms and conditions of said policy would not be required or insisted upon. And that about the 31st day of October, plaintiff learning that said defendant claimed a right to forfeit said policy, tendered and offered to pay the full amount claimed by defendant upon said policy for the quarter ending December 12th, 1890, which sum was refused by defendant.

Plaintiff replying to defendant's answer, and distinct answer to plaintiff's second cause of action, says:

1.

Plaintiff denies that any notice of the amount of premium to become due October 11th, 1890, was ever mailed by defendant, and addressed to plaintiff at Tacoma, Washington.

2.

Plaintiff denies that any notice of the amount of premium to become due October 11th, 1890, was ever served upon plaintiff or upon said Thos. Lea Nixon, thirty days prior to October 11th, 1890, or at all.

3.

Plaintiff denies that a notice mailed in New York on the 8th day of September, 1890, could be received through the mails at Tacoma, Washington, thirty days prior to October 11th, 1890.

78 4.

That said contract of insurance was made, executed and delivered under the laws of the State of New York, and that under said laws, said insurance policy could not be forfeited or declared lapsed, save by compliance with said laws, and plaintiff denies that any notice as provided by said laws of the State of New York was ever mailed to, or served upon plaintiff or said Thos. Lea Nixon. That plaintiff and said Thos. Lea Nixon relying upon the acceptance by defendant of premiums after the same became due, from time to time, upon the policy described in plaintiff's first cause of action, believed that a strict compliance of the terms of said policy would not be required, and not — received said notice, this plaintiff about

October, 1890, went to the defendant's agent to ascertain the amount of premium to be paid upon said policy, at which time plaintiff was informed by said agent that said policy had already been canceled, whereupon she tendered defendant the amount claimed, which tender was refused.

THOS. CARROLL,
L. A. PALMER, AND
STANTON WARBURTON,
Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss:
County of Pierce, }

Cora E. Nixon, being first duly sworn deposes and says: that she is the plaintiff above named; that she has read the foregoing complaint; knows the contents thereof, and that the same are true as she verily believes.

CORA E. NIXON.

79 Subscribed and sworn to before me this 13th day of February, 1895.

THOS. CARROLL,
Notary Public for the State of Washington, Residing at Tacoma, Pierce County, Washington.

(And endorsed on the back thereof:) No. 308. In U. S. circuit court for the district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, defendant. Reply. Filed this 21st day of February, A. D. 1895. A. Reeves Ayres, clerk. Saving all objections, service of a copy of the within instrument is hereby admitted this 14 day of February, A. D. 1895. Walker & Fitch, attorneys for def't. Carroll & Carroll, attorneys for plaintiff, Merchants' Bank building, Pacific avenue, Tacoma, Washington. Refiled Feb'y 26, 1895. A. Reeves Ayres, clerk, by Sam'l D. Bridges, deputy.

And afterwards, to wit, on the 26th day of February, 1895, there was duly filed in said court in said cause an amended answer of defendant in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant. } Case No. 308.

Amended Answer.

The defendant, for its amended answer herein to the plaintiff's complaint, in respect to the first cause of action set forth:

80 First. Defendant admits all the allegations of the first paragraph of the first cause of action in said complaint.

Second. Defendant admits the making of the certain contract of insurance alleged in the second paragraph of the first cause of action in said complaint, and admits that the copy of said contract therein set forth is correct so far as the same is given, but the defendant alleges that a portion of said contract, to wit, the application, is not therein set forth, and that a copy of part one of said application, marked "Exhibit A," is annexed to this answer and constitutes a part thereof.

Third. As to the allegations constituting the third, fourth and seventh paragraphs of the first cause of action in plaintiff's complaint, defendant denies any knowledge or information thereof sufficient to form a belief.

Fourth. Defendant denies the allegation constituting the fifth paragraph of the first cause of action in plaintiff's complaint.

Fifth. Defendant denies the allegations contained in the sixth paragraph of the first cause of action in plaintiff's complaint, except that defendant admits that at all times it has denied its liability to plaintiff upon the contract of insurance set forth in the first cause of action in said complaint.

Sixth. Defendant denies the allegation constituting the eighth paragraph of the first cause of action in the plaintiff's complaint.

Seventh. Defendant admits the allegation contained in the
81 last clause of the ninth paragraph of the first cause of action in the plaintiff's complaint, and as to the other allegations therein contained, it denies any knowledge or information thereof sufficient to form a belief.

For a separate and distinct defense to the first cause of action in plaintiff's complaint, defendant alleges:

I. That on or about the 12th day of June, 1890, through a clerical error in the office of the defendant, the notice of premium then due on said policy was made too large by the sum of one and $\frac{25}{100}$ dollars, which excess was then paid to defendant, and that thereafter, defendant having been informed of said error by its agent in Tacoma, agreed to deduct the amount of said excess payment from the next quarterly premium to become due on said policy on the 12th day of September, 1890, and defendant alleges that it did so deduct the same, and that on the 4th day of August, 1890, it caused a notice of the premium to become due on said policy of life insurance September 12th, 1890, to be duly deposited in the post-office in the city of New York, postage prepaid, addressed to the said Thomas Lea Nixon, at Tacoma, in the State of Washington, which was his last known address and place of residence as appeared on the books of the defendant, all in conformity to the laws of the State of New York; that the amount called for by said notice was reduced from the total premium of seventeen and $\frac{10}{100}$ dollars, which would otherwise have been due, by deducting therefrom the sum of one and $\frac{25}{100}$ dollars formerly paid in excess, as aforesaid, leaving the balance of fifteen and $\frac{85}{100}$ dollars ($15.85) which was the sum
82 called for in said notice and that defendant sent its receipt properly signed for said sum of fifteen and $\frac{85}{100}$ dollars ($15.85) to the Traders' Bank of Tacoma to be surrendered to said insured

upon the payment thereof. And that on or about the 11th day of August, 1890, and at least thirty and not more than sixty days prior to the said 12th day of September, 1890, defendant also caused a notice of the premium to become due on said policy on said 12th day of September, 1890, to be duly deposited in the post-office at Tacoma, Washington, postage prepaid, addressed to said Thomas Lea Nixon at Tacoma, in the State of Washington, which was his last known post-office address; all in conformity to the laws of the State of New York; that the amount called for by said notice was reduced from the total premium of seventeen and $\frac{10}{100}$ dollars which would otherwise have been due, by deducting therefrom the sum of one and $\frac{25}{100}$ dollars formerly paid in excess as aforesaid, leaving the balance of fifteen and $\frac{85}{100}$ dollars ($15.85) which was the sum called for in said notice.

II. That said premium falling due on the 12th day of September, 1890, has not been paid.

That the defendant for its amended answer herein to plaintiff's complaint in respect to the second cause of action herein set forth

First. Defendant admits all the allegations of the first paragraph of the second cause of action in said complaint.

Second. Defendant admits the making of a certain contract of insurance alleged in the second paragraph of the second
83 cause of action in said complaint, and admits that the copy of said contract therein set forth is correct so far as the same is given, but defendant alleges that a portion of said contract, to wit: the application is not therein set forth, and that a copy of part one of said application marked "Exhibit B" is annexed to this answer and constitutes a part thereof.

Third. As to the allegations constituting the third, fourth and seventh paragraphs of the second cause of action in plaintiff's complaint, the defendant denies any knowledge or information thereof sufficient to form a belief.

Fourth. Defendant denies the allegations constituting the fifth paragraph of the second cause of action in the plaintiff's complaint.

Fifth. Defendant denies the allegations contained in the sixth paragraph of the second cause of action in the plaintiff's complaint, except that defendant admits that at all times it has denied its liability to plaintiff under the contract of insurance set forth in the second cause of action in said complaint.

Sixth. Defendant denies the allegations constituting the eighth paragraph of the second cause of action in plaintiff's complaint.

Seventh. Defendant admits the allegation contained in the last clause of the ninth paragraph of the second cause of action in the plaintiff's complaint, and as to the other allegations therein contained, it denies any knowledge or information thereof sufficient to form a belief.

84 For a separate and distinct defense to the second cause of action in plaintiff's complaint, defendant alleges:

I. That on the 8th day of September, 1890, it caused a notice of the premium to become due on said last-named policy, on October

11th, 1890, to wit: the sum of two hundred and fifty eight dollars ($258), to be deposited in the post-office in the city of New York, postage prepaid, addressed to Thomas L. Nixon, at Tacoma, State of Washington, which was his last known address and place of residence, as appeared from the books of the defendant; all in conformity to the laws of the State of New York; and further, that defendant sent its receipt, properly signed, for said sum of $258, to the Traders' Bank of Tacoma, to be surrendered to said insured upon the payment thereof; and that on or about the 9th day of September, 1890, and at least thirty and not more than sixty days prior to said 11th day of October, 1890, defendant also caused a notice of the premium to become due on said policy, on the 11th day of October, 1890, to be duly deposited in the post-office at Tacoma, Washington, postage prepaid, addressed to said Thomas L. Nixon, at Tacoma, in the State of Washington, which was his last known post-office address; all in conformity to the laws of the State of New York.

II. That said premium falling due on the 11th day of October, 1890, has not been paid.

85 Wherefore, said defendant prays for a dismissal of the plaintiff's complaint herein with its reasonable costs and expenses in this action.

WALKER & FITCH,
Attorneys for the Defendant.

P. O. address, 607-'9 Fidelity building, Tacoma, Pierce county, Washington.

PART I.

Application for Assurance in the Provident Savings Life Assurance Society of New York.

1. Name of the person whose life is proposed to be assured; write the name in full—Thomas Lea Nixon. Occupation, loan broker. Residence, place, Tacoma; county, Pierce, Washington Territory. Where shall notices of premiums be addressed?—Tacoma, Wash. Ter.

2. How much assurance is desired?—Ans., $5,000.00.

3. What kind of a policy is desired?—A. Ans., Straight life. B. Are payments of premiums to be made annually, semi-annually or quarterly?—B. Ans., Quarterly.

4. Are you now assured in this society?—A. Ans., No. Globe Reserve, $5,000 ac. B. What amounts are now assured on your life, and in what companies?—B. Ans., N. Y. Mutual, $2,000; Travelers', $3,000 ac.

5. Has any company ever declined to grant assurance on your life?—A. Ans., No. B. Has any company ever postponed the consideration of your application, or modified it with respect to amount of assurance term of years, or in any manner whatever?—B. Ans., No. C. If so, what company?—C. Ans., ——.

86 D. When?—D. Ans., ——. E. Why?—E. Ans., ——.

6. Give the date and place of your birth—Year, 1849; month, May; day, 15th. State or county, Pennsylvania.

7. A. Age nearest birthday—Ans., 57. Are you married?—Ans., Married.

8. Name and residence of one or more intimate friends—J. M. Steele, Tacoma, W. T.

9. For whose benefit is the assurance to be effected? (write name in full)—Cora Evelyn Nixon. Relationship to person insured—Wife. Residence place, Tacoma; county, Pierce, W. T. Occupation, housekeeper.

10. It is hereby affirmed and declared by Thomas Lea Nixon, the applicant above named, and also by the person whose life is proposed for assurance, that the answers to all of the above questions, also those made to the medical examiner, are true and correct, and that no intentional omission, concealment or mental reservation has been made of any material facts or circumstances relating to the past or present health, habits or condition, or the family history of the above named.

And it is hereby expressly stipulated and agreed that the above application and this declaration with the policy issued thereon shall for- the contract between the above-named persons and the said Provident Savings Life Assurance Society of New York, and that if any misrepresentations or fraudulent or untrue answers have been made, or if any facts which should have been stated to the
87 society have been suppressed therein, or if any violation of the covenants, conditions or restrictions of the policy (should one be issued) shall occur, or an omission or neglect to make any payment, as required by the conditions of the policy, that then, in either event, the said policy shall become and be null and void, and all moneys which shall have been paid shall be forfeited to the society for its sole use and benefit.

And the said person whose life is proposed for assurance further declares that he is not now afflicted with any disease or disorder, that he does not now, and that he will not practice any pernicious habit that obviously tends to the shortening of life.

Dated at Tacoma, W. T., this 12th day of June, 1886.

Signature of beneficiary, Cora Evelyn Nixon.

Signature of person assured, Thomas Lea Nixon, signed.

In presence of R. W. Casewell, signed.

The following was written on the side of the foregoing policy: "Ac. T. L. Nixon."

PART I.

Application for Assurance in the Provident Savings Life Assurance Society of New York.

1. Full name of the person upon whose life the insurance is proposed—Thomas Lea Nixon. Specific occupation—Capitalist. Residence—Place, Tacoma; county, Pierce; State, Washington.

2. A. Where shall notice of premiums be addressed?—A. Ans. ——. B. Are you married?—B. Ans. ——.

3. A. Are you now insured in this society?—A. Ans. Yes.
88 B. If so, for what amount?—B. Ans., $5,000. C. If now insured, state in what companies or organizations, the kinds of policies, and their respective amounts—C. Ans., Mutual, 2,000; Tra. Life, 5,000; Equitable, 10,000; P. Mutual, 10,000.

4. Give the date and place of your birth—Year, 1849; month, May; day 15; State or county, Pa.; age, nearest birthday, 40.

5. Full name of the beneficiary for whom the insurance is desired—Cora Evelyn Nixon. Relationship to the insured—Wife. Residence—Place, Tacoma; county, Pierce; State, Washington. Amount desired—$15,000.

6. I hereby apply to the Provident Savings Life Assurance Society of New York for an insurance of fifteen thousand dollars, payable after my death, upon the level renewal-term plan with dividends applied participating premiums, payable annually in behalf of and for the benefit of Cora E. Nixon, my wife. I declare that I am, to the best of my knowledge and belief, in sound physical condition, and that I am and have been for the past — years engaged in business as Real Estate & Co. It is jointly agreed by myself and all parties in interest or who may become interested, as follows: That I will not, for two years from date, visit or reside in any tropical climate without the written consent of the society; that I will not at any time personally engage in blasting, labor in mines, submarine labor, aëronautic ascensions, the manufacture or handling of highly inflammable or explosive substances, or service upon any vessel or railroad, or in any military or naval service in time of war, with-
89 out first obtaining, in each and every such case, the written consent of the society; that self-destruction, whether sane or insane, within one year from the date of the policy herein applied for, is a risk not assumed by the society; that death resulting from violation of law or in the attempt to violate law is a risk not at any time assumed by the society under the policy applied for; that the proofs of death required by the policy applied for shall be made upon the blank form prescribed by the society, and shall include all the information required thereby; that all provisions of law forbidding any physician who has or may have attended me from disclosing any or all information which he acquired by such attendance, are hereby expressly waived; that any policy based upon this application shall at all times and places be construed to be a contract made in the State of New York. We further declare and warrant, jointly and severally, that all the foregoing statements and representations, as well as those made or to be made to the medical examiner, or in any certificate of health hereafter given to the society by me, are and shall be true and shall be the basis of the contract with the society if a policy be issued or renewed thereon, and that, if any untrue or fraudulent statement, or representation shall have been made, or if at any time any covenant, condition or agreement herein made shall be violated, said policy and insurance shall be null, void and of no effect.

7. What cash premium has been paid to make the insurance

under this application binding from this date, providing the risk is assumed by the society?

90 A —— annual premium of $—— has been paid upon condition that if the risk is not assumed by the society, this sum is to be returned in accordance with the provisions of the society's official binding receipt No. — given as voucher for said payment.

Dated at Tacoma this 20th day of Sept., 1889. In presence of R. B. Parrott, signed.

Signature of the party or parties for whose benefit the insurance is to be effected. (Write the names in full.) Cora Evelyn Nixon by Thomas L. Nixon.

NOTE.—In case of husband and wife, or parent and children, the former may sign for the latter, thus: Mary Smith by John Smith.

Signature of the party on whose life insurance is applied for. (Write the name in full.) Thomas Lea Nixon, signed.

STATE OF WASHINGTON, } ss:
County of Pierce, }

C. S. Tourtellot, being first duly sworn, deposes and says: that he is the general agent of The Provident Savings Life Assurance Society of New York, the defendant in the above-entitled action; that he has read the foregoing amended answer; that he knows the *the* contents thereof, and that he believes the same to be true, and that the reason this verification is made by this affiant is that the defendant herein is not a resident of this State.

C. S. TOURTELLOT.

91 Subscribed and sworn to before me this 26th day of February, 1895.

[NOTARIAL SEAL.] JOHN E. WALKER,
Notary Public, Residing at Tacoma,
Pierce County, State of Washington.

(And endorsed on the back thereof:) No. 308. In the U. S. circuit court, for the district of Washington. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, defendant. Amended answer. Filed February 26th, 1895. A. Reeves Ayres, clerk. Walker & Fitch, 607–609 Fidelity Trust building, Tacoma, Wash.

And afterwards, to wit: on Saturday, the 23d day of February, 1895, the same being the 12th judicial day of the regular February term of said court—present: the Honorable Cornelius H. Hanford, United States district judge, presiding—the following proceedings were had in said cause, to wit:

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Trial.

Now on this day this cause coming on for trial, Messrs. Carroll, Palmer, Hagerman and Warburton appearing for the plaintiff, and Messrs. Fitch and Walker on behalf of the defendant, a jury
92 being called, the following-named persons came and answered to their names and were duly sworn to try the cause, to wit:

Fred. Wiggins.	J. D. McMillan.
Thos. Moulton.	Wm. H. Branchied.
Chas. Shagren.	Edward Lacey.
H. G. Peters.	John P. Hays.
James McReavy.	Chas. Miller.
J. C. Johnson.	Jno. O. Wilson.

Thereupon the jury was admonished by the court, and by consent allowed to separate until the incoming court tomorrow morning.

And afterwards, to wit, on Monday, the 25th day of February, 1895, the same being the 13th judicial day of the regular February term of said court—present: the Honorable Cornelius H. Hanford, United States district judge, presiding—the following proceedings were had in said cause, to wit:

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Now, on this day, this cause coming on for further trial, the jury being called came and duly answered to their names, and thereupon the trial duly proceeded until the hour of adjournment, when by consent the jury was admonished by the court and allowed to separate until the incoming court tomorrow morning.

(Monday—13th day, February 25th.)

93 And afterwards, to wit, on Tuesday the 26th day of February, 1895, the same being the 14th judicial day of the regular February term of said court—present: the Honorable Cornelius H. Hanford, United States district judge, presiding—the following proceedings were had in said cause, to wit:

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Now, on this day this cause coming on for further trial the jury being called, came and answered to their names.

On application of the defendant,

It is ordered, that the defendant be and it is hereby allowed to

amend its answer upon payment of the sum of twenty-five dollars, to the plaintiff, terms for such amendment.

Thereupon the trial duly proceeded until the hour of adjournment, when by consent the jury was admonished by the court, and allowed to separate until the incoming of court tomorrow morning.

And afterwards, to wit: on the 26th day of February, 1895, there was duly filed in said court in said cause the reply of the plaintiff filed on the 21st day of February, 1895.

94 And afterwards, to wit: on the 26th day of February, 1895, there was duly filed in said court in said cause, defendant's exception- to the charge of the court to the jury in the words and figures as follows, to wit:

In the United States Circuit Court for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.	Case. No. 308. Defendant's Exceptions to the Court's Instructions to the Jury.

Exceptions to Charge to Jury.

The defendant respectfully excepts to the instructions given by the court to the jury in the following particulars:

First. To so much of said instructions as in effect directed the jury to return a verdict for the plaintiff upon plaintiff's first cause of action, to wit: upon the $5,000 policy.

Second. To so much of said instructions as in effect stated that no premiums were payable unless notice of such premiums had been given.

Third. To so much of said instructions as in effect stated that the defendant has failed to prove the sending out of the notices from New York of the premiums due on the 12th day of September, 1890, and on the 11th day of October, 1890, respectively.

Fourth. To so much of said instructions as in effect stated that the burden of proof was upon the defendant.

WALKER & FITCH,
Attorneys for Defendant.

95 (And endorsed on the back thereof:) Case No. 308. In the circuit court of the United States, ninth judicial circuit, district of Washington. Cora E. Nixon *vs.* Prov. Sav. Life Ass'nce Society. Filed Feb'y 26, 1895. A. Reeves Ayres, clerk, by Sam'l D. Bridges, deputy clerk.

And afterwards, to wit: on Wednesday, the 27th day of February, 1895, the same being the 15th judicial day of the regular February term of said court—present: the Honorable Cornelius H. Hanford, United States district judge, presiding—the following proceedings were had in said cause, to wit:

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Verdict.

Now on this day this cause coming on for further trial, the jury being called came and answered to their names. Thereupon the trial duly proceeded to the conclusion of the testimony and arguments, when the jury was charged by the court and retired to deliberate upon its verdict.

After due deliberation the jury comes into open court and returns the following verdict, to wit:

We, the jury, impaneled in the above-entitled case, find for the plaintiff in the sum of $24,276.67, twenty-four thousand and two hundred and seventy-six and $\frac{67}{100}$ dollars.

JOHN O. WILSON, *Foreman.*

96 And afterwards to wit: on the 8th day of March, 1895, there was duly filed in said court, in said cause a stipulation extending time to file motion for a new trial and bill of exceptions, in the words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.

Case 308. Stipulation Extending Defendant's Time to File Motion for New Trial and Bill of Exceptions.

Stipulation.

It is hereby stipulated and agreed that the time within which the defendant must file and serve its motion for new trial and its bill of exceptions herein, and institute proper proceedings thereunder may be extended until and including the 29th day of March, 1895, and that an order may be entered to that effect without notice to plaintiff and without costs.

Dated Tacoma, Washington, March 7th, 1895.

CARROLL, PALMER & WARBURTON,
Attorneys for Plaintiff.

97 In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Defendant.	Case No. 308. Order Extending Defendant's Time to Move for New Trial and File and Serve Exceptions.

Order Extending Defendant's Time to Move for New Trial and File and Serve Exceptions.

Upon reading and filing the annexed stipulation, made by plaintiff's attorney herein, that defendant may have twenty days' additional time within which to file and serve its motion for new trial and bill of exceptions herein, and on motion of Messrs. Walker and Fitch, attorneys for defendant,

Ordered, that the time allowed the defendant by the rules of this court, within which to file and serve its motion for new trial and bill of exceptions herein, and take the necessary proceedings thereunder, be and the same is hereby enlarged for twenty days and until and including the 29th day of March, 1895.

C. H. HANFORD, *Judge.*

(And filed on the back thereof:) No. 308. In the circuit court of the United States, for the district of Washington, western division. (127.) Cora E. Nixon *vs.* Provident Savings Life Assurance Society, defendant. Filed Mar. 8th, 1895. A. Reeves Ayres, clerk. Walker & Fitch, 607–609 Fidelity Trust building, Tacoma, Washington. —— ——, attorneys for ——.

98 And afterwards, to wit: on the 18th day of March, 1895, there was duly filed in said court in said cause, a stipulation and a motion for a new trial in the words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant.	Case No. 308.

Stipulation.

It is hereby stipulated by and between the parties hereto that the defendant may have until and including Monday, the 18th day of March, 1895, within which to file and serve its motion for a new trial with notice thereof, and all papers to be used in connection

therewith, and that said motion for a new trial may be argued on Wednesday, the 20th day of March, 1895.

Dated at Takoma this 15th day of March, 1895.

CARROLL, PALMER & WARBURTON,
Attorneys for the Plaintiff.

(And endorsed on the back thereof:) No. 308. In the circuit court of the United States, district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, defendant. Stipulation. Filed March 18th, 1895. A. Reeves Ayres, clerk, by Sam'l D. Bridges, deputy. Walker & Fitch, attorneys for defendant.

99 In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant.	Case No. 308. Motion for New Trial.

Motion for New Trial.

Now comes the defendant, The Provident Savings Life Assurance Society, by its attorneys, Messrs. Walker & Fitch, and moves this honorable court to vacate and set aside the verdict rendered in the above-entitled action on the 27th day of February, 1895, and to grant a new trial of said cause upon the following grounds to wit:

I.

Insufficiency of the evidence to justify the verdict, and that said verdict is against law.

II.

Error in law occurring at the trial and excepted to at the time by the party making this application.

Said motion will be made on the minutes of the court, and the pleadings and proceedings on file in the clerk's office.

Dated this 15th day of March, 1895.

WALKER & FITCH,
Attorneys for the Defendant.

Received a copy of the foregoing motion this 15th day of March, 1895.

CARROLL, PALMER & WARBURTON,
Attorneys for Plaintiff.

100 (And filed on the back thereof:) No. 308. In the circuit court of the United States, district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, defendant. Motion for new trial. Filed March 18th, 1895. A. Reeves Ayres, clerk; Samuel D. Bridges, deputy. Walker & Fitch, attorneys for defendant.

And afterwards, to wit: on Wednesday, the 20th day of March, 1895, the same being the 28th judicial day of the regular February term of said court—present: the Honorable Cornelius H. Hanford, United States district judge, presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States, District of Washington, Western Division, Ninth Judicial Circuit.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant. } No. 308.

Judgment.

This cause having heretofore come on for trial, to wit: on the 23rd day of February, 1895, and a jury having been regularly empaneled, and the court having heard the proofs and allegations of the parties, and Thos. Carroll and L. A. Palmer and Stanton
101 Warburton and W. S. Relfe appearing for the plaintiff, and Walker & Fitch appearing for the defendant, and the cause having been submitted to a jury upon the instructions of the court and allegations of the parties, and the jury having retired and considered their verdict, and having returned a verdict in open court in favor of the plaintiff and against the defendant for the sum of twenty-four thousand two hundred and seventy-six dollars and seventy-six cents ($24,276.76), on the 27th day of February, 1895, and counsel for the defendant having filed a motion for a new trial, and the said motion for a new trial having come up for hearing and argument on this 20th day of March, 1895, and the court considering the same, and the plaintiff in open court having remitted from the amount of said verdict the sum of sixty-four dollars and eighty-seven cents ($64.87) on the first cause of action, and the sum of two hundred and sixty-five dollars and seventy-four cents ($265.74) on the second cause of action for premiums unpaid, thereby reducing said verdict to the sum of twenty-three thousand nine hundred and forty-six dollars and fifteen cents ($23,946.15), said motion is hereby denied by the court allowing to defendant an exception and said plaintiff moving that judgment be entered against the said defendant and in favor of the said plaintiff on said verdict, so reduced,

It is hereby ordered, considered and adjudged that the plaintiff, Cora E. Nixon, do have and recover of and from the defendant, The Provident Savings Life Assurance Society of New York, the full sum of twenty-three thousand nine hundred and forty-six dollars
102 and fifteen cents ($23,946.15), in lawful money of the United States, together with her costs and disbursements in this action, taxed at —.

March 20, 1895.

C. H. HANFORD, *Judge.*

(And endorsed on the back thereof:) J. R., 91. No. 308. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society, defendant. Judgment. Filed this 20th day of March, A. D. 1895. A. Reeves Ayres, clerk.

An- afterwards, to wit: on Wednesday, the 20th day of March, 1895, the same being the 28th judicial day of the regular February term of said court—present: the Honorable Cornelius H. Hanford, United States district judge, presiding—the following proceedings were had in said cause, to wit:

Order Overruling Motion for a New Trial.

Now on this day this cause coming on for hearing upon defendant's motion for a new trial, after arguments of counsel and the court being fully advised in the premises—

It is ordered, that the said motion be and the same is hereby overruled.

To which ruling of the court defendant excepts and his exception is allowed.

And afterwards, to wit: on the 29th day of March, 1895, there was duly filed in said court, in this cause, a stipulation, bill of exceptions, and amendments to bill of exceptions, in the words and figures as follows, to wit:

103 In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant. } Case No. 308.

Stipulation as to Bill of Exceptions and Amendments Thereto.

And it is hereby stipulated and agreed by and between Messrs. Thomas Carroll, Leroy A. Palmer and Stanton Warburton, attorneys for the plaintiff, and Messrs. Walker & Fitch, attorneys for the defendant, that a bill of exceptions and amendments thereto, this day filed herein, may be signed and allowed by his honor, C. H. Hanford, judge, without further delay.

Dated at Tacoma, this 29th day of March, 1895.

CARROLL, WARBURTON,
PALMER & RELFE,
Attorneys for Defendant.
WALKER & FITCH,
Attorneys for Plaintiff.

(And endorsed on the back thereof:) No. 308. In the circuit court of the United States, district of Washington, western division. Stipulation as to bill of exceptions and amendments thereto.

Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society of New York, defendant. Walker & Fitch, 607–9 Fidelity Trust building, Tacoma, Washington, attorneys for defendant. Filed March 29th, 1895, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

104 In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant. } Case No. 308.

Bill of Exceptions.

Be it remembered, that afterward, to wit, on the 23rd, 25th and 26th days of February, in the year of our Lord one thousand eight hundred and ninety-five, at a stated term of the said court, begun and holden in Tacoma, in and for the district of Washington, western division, before his honor, C. H. Hanford, district judge, the issue joined in the above-stated cause between the said parties came on to be tried before the said judge, sitting with a jury; the plaintiff being represented by Messrs. Thomas Carroll, Leroy A. Palmer and Stanton Warburton, and the defendant by Messrs. Walker & Fitch; and upon the trial of that issue the attorneys of said defendant to maintain and prove the said issue on its part, read in evidence the deposition of WILLIAM E. STEVENS, certain questions and answers whereof, together with the objections thereto, the rulings thereon and the exceptions to said rulings were as follows:

Q. 1. What is your name, residence, age and occupation?

A. 1. William E. Stevens, 51 years old, Brooklyn, N. Y., secretary of the Provident Savings Life Assurance Society of New York.

105 Q. 2. How long have you been in the employ of the Provident Savings Life Assurance Society, and in what capacity?

A. 2. From 1875, as assistant secretary until 1878; since that date as secretary.

Q. 3. What officer or employee had charge of the mailing of notices to the policy-holders of said society in the months of August and September, 1890, of the amount of quarterly payments or other premiums falling due upon its policies?

A. 3. In August, 1890, Harry H. Meeder, a clerk in the employ of the society; in September, 1890, E. Seward Prosser, another clerk of the society.

Q. 4. What officer of the Provident Savings Life Assurance Society has since the 12th day of June, 1886, had charge of the records of the premiums falling due upon policies issued by said society and the payment thereof?

A. 4. I have, and since the date named have had such charge, but the actual work upon these records is done by clerks under my supervision.

Q. 5. State what premiums were paid to the Provident Savings Life Assurance Society on its policy No. 18647, for the sum of $5,000, issued to Thomas L. Nixon, Tacoma, Washington, giving the amount of each payment and the dates when received.

A. 5. Premium due June 12, 1886, $32.86. Received October 29, 1886.

Premium due September 12, 1886, $12.90. Received October 29, 1886.

Premium due December 12, 1886, $12.90. Received December 21, 1886.

106 Premium due March 12, 1887, $12.90. Received March 27, 1887.

Premium due June 12, 1887, $12.90. Received June 24, 1887.

Premium due September 12, 1887, $14.65. Received September 26, 1887.

Premium due December 12, 1887, $14.65. Received January 3, 1888.

Premium due March 12, 1888, $14.65. Received March 27, 1888.

Premium due June 12, 1888, $15.05. Received June 23, 1888.

Premium due September 12, 1888, $15.05. Received September 19, 1888.

Premium due December 12, 1888, $15.05. Received December 24, 1888.

Premium due March 12, 1889, $15.05. Received March 20, 1889.

Premium due June 12, 1889, $15.30. Received June 21, 1889.

Premium due September 12, 1889, $15.30. Received October 18, 1889.

Premium due December 12, 1889, $15.30. Received December 23, 1889.

Premium due March 12, 1890, $15.30. Received March 25, 1890.

Premium due June 12, 1890, $17.10. Received June 18, 1890.

The dates given are those of the actual receipt of the premium at this office. These premiums, up to and including that due June 12, 1889, were received from Nixon himself during his agency.

107 The premiums due from September 12th, 1889, to June 12th, 1890, were collected by Chidester.

Q. 6. At what times did the quarterly payments become due on said policy?

A. 6. On the 12th days of June, September, December and March in each year, as will also appear from the policy contract.

Q. 7. What was the amount due said society on account of the quarterly payment upon said policy falling due in the month of September, 1890?

A. 7. $17.10.

Q. 8. What was the amount of the last quarterly premium actually paid to the society on account of said policy and the date when made?

A. 8. $18.35; premium due June 12th, 1890, received June 12th, 1890.

Q. 9. Was this payment the exact amount due for that particular quarterly payment?

A. 9. No.

Q. 10. If not, state what the correct amount was and explain how the mistake occurred, and how the matter was adjusted.

A. 10. The correct amount was $17.10. The mistake occurred in this way, viz: The premiums on the policy in question consisted of two parts, namely,—a quarterly expense charge of $3.75 per quarter, and a mortuary premium of varying amount. In preparing the receipt and notice for the premium due June 12th, 1890, an expense charge of $5.00, instead of $3.75 was erroneously made by the clerk who prepared them, and the total sum of $18.35 was called for and paid by Mr. Nixon, instead of $17.10, the true amount due on
108 that date. The attention of the society was called to his error of $1.25 by letter of W. C. Chidester, general agent, of date June 12th, 1890, hereto annexed and marked "Exhibit A." To this letter, reply was made by letter to W. C. Chidester of date June 18th, 1890, copy of which is hereto annexed and marked "Exhibit B." In this letter it was suggested that the $1.25 erroneously added to the June expense charge would be deducted from that to become due in September. This was accordingly done, and the expense charge portion of the amount due in September was reduced from $3.75 to $2.50 as per original receipt sent out for collection and returned unpaid, and annexed hereto marked "Exhibit C;" and the total amount due and called for was made $15.85, instead of $17.10. The amount of $15.85 due upon this policy September 12th, 1890, has never been received by this society, nor was its payment tendered at any time on or before September 12th, 1890.

Q. 11. Were notices of premiums falling due upon said policy sent to Thomas L. Nixon by the secretary? If so, attach to your answer hereto true copies of the notices so sent of premiums falling due June 12, 1890, and September 12, 1890, and give the dates when the same were mailed, if sent by mail?

A. 11. Yes, and true copies of the notices referred to are hereto attached and marked Exhibits "D" and "E." They were mailed respectively on May 9th, 1890, and August 4th, 1890.

Whereupon counsel for the said plaintiff then and there objected to the answer last above given on the ground that it had already been shown by the deposition that the said William E.
109 Stevens was not the party who mailed the said notices, and consequently was incompetent to testify.

Whereupon his honor, the said judge, sustained the objection, upon the ground that the answer did not state facts within the personal knowledge of the deponent.

Whereupon counsel for the defendant excepted to the ruling of his honor, the said judge, and the said exception was by his honor, the said judge allowed.

Q. 12. State what premiums were paid to the Provident Savings Life Assurance Society on its policy No. 32025 for the sum of $15,000, issued to Thomas L. Nixon, of Tacoma, Washington, and give the amount of each payment, and the dates when received.

A. 12. The only premium ever received by the society upon policy No. 32025 was included in a report from R. B. Parrott, of Waco, Texas, who was at that time the society's manager for the Pacific coast and was received at the home office of the society March 11th, 1890. I do not know when it was paid by Mr. Nixon to the local agent at Tacoma, nor when it was received by Mr. Parrott. Its amount was $258.00.

Q. 13. At what date did the annual payment become due on the said last-named policy?

A. 13. On the 11th day of October in each year as shown by the policy contract.

Q. 14. What was the date and amount of the last payment to said society on account of said last-named policy?

A. 14. No payment was ever received upon policy No. 32025 except that named in my twelfth answer.

110 Q. 15. Were the notices of premiums falling due upon said policy No. 32025 sent to Thomas L. Nixon by the society? If so, attach to your answer hereto a true copy of each notice so sent, and give the date when the same was mailed if sent by mail?

A. 15. Yes. The notice was mailed September 9th, 1890. Copies of two forms of notices are attached hereto and marked "Exhibit F and F 2." I cannot say positively which form was used.

Whereupon counsel for the plaintiff then and there objected to the answer last above given on the ground that it had already been shown by the deposition that the said William E. Stevens was not the party who mailed the said notices and consequently was incompetent to testify.

Whereupon his honor the said judge sustained the objection upon the ground that the answer did not state facts within the personal knowledge of the deponent.

Whereupon counsel for the defendant excepted to the ruling of his honor the said judge, and said exception was by his honor, the said judge, allowed.

Q. 24. Was any tender ever made to your company by Thomas L. Nixon or any other person, of the quarterly premium due September 12, 1890, on policy No. 18647, and the annual premium due October 11, 1890, on policy No. 32025, or either of them?

A. 24. No.

And thereupon the said defendant further to prove and maintain the said issue on its part offered in evidence the letter from W. C. Chidester to the Provident Savings Life Assurance Society,

111 dated June 12, 1890, to which reference was made in the answer of William E. Stevens to the tenth interrogatory, above set forth, which said letter was admitted in evidence, the same being in the words and figures following, to wit:

TACOMA, W. T., *June 12th*, 1890.

Wm. E. Stevens, sec'y, New York city.

DEAR SIR: Enclosed please find N. Y. exchange for $32.50 pre-

mium on policy 18647, Thos. L. Nixon $18.35, and Wm. H. Travers $14.15. The former claims $1.25 overcharge on the expense charge as his policy was taken out in 1885 and limits the expense to 75 cts. per 1,000.00.

Yours truly,

(Signed) W. C. CHIDESTER, *Gen'l Agent.*

And thereupon the said defendant further to prove and maintain the said issue on its part offered in evidence the letter from the Provident Savings Life Assurance Society to W. C. Chidester, dated June 18, 1890, to which reference was made in the answer of William E. Stevens to the tenth interrogatory above set forth, which said letter was admitted in evidence, the same being in the words and figures following, to wit:

NEW YORK, *June 18th*, 1890.

W. C. Chidester, Esq., gen'l agent, Tacoma, Wash.

DEAR SIR: Your favor of the 12th inst. enclosing draft for $32.50 in payment of premiums on policies Nos. 18647 and W. H. Travers, is duly received.

112 Mr. Nixon is right in his claim that he has overpaid on expense dues; it is a clerical error and will be corrected on his September premium; that is, we will deduct from the September premium $1.25 overpaid on the June premium. We trust this will be satisfactory to Mr. Nixon, as the June premium has already been paid.

Yours truly,

(Signed) WM. E. STEVENS, *Secretary.*

And thereupon the said defendant further to prove and maintain the said issue on its part offered in evidence copies of the notices of premiums falling due June 12, 1890, and September 12, 1890, respectively, to which reference was made in the answer of the said William E. Stevens to the eleventh interrogatory above set forth, which said copies of said notices are in the words and figures following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *May 9th*, 1890.

Take notice that a premium of $18.35, required to renew policy No. 18647 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 120 Broadway, in the city of New York, on the 12th day of June, 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

113 All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized

agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Aug.* 4, 1890.

Take notice that a premium of $15.85 required to renew policy No. 18647 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society at its office No. 120 Broadway, in the city of New York, on the 12 day of Sept., 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, pay-
114 ments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Whereupon counsel for the said plaintiff then and there objected to the introduction of the said copies of said notices on the ground that it had already been shown by the deposition of the said William E. Stevens that the deponent was not the party who mailed the same.

Whereupon his honor, the said judge, sustained the objection upon the ground that the answer to the said eleventh interrogatory did not state the facts within the personal knowledge of the deponent.

Whereupon the counsel for the defendant excepted to the ruling of his honor, the said judge, excluding said notices, and said exception was by his honor the judge allowed.

And thereupon the said defendant further to prove and maintain the said issue on its part offered in evidence the two forms of notices of the premium falling due October 11, 1890, to which refer-

ence was made in the answer of the said William E. Stevens to the fifteenth interrogatory, above set forth, which said copies of said notices were in the words and figures, following, to wit:

115 Office of the Provident Savings Life Assurance Society of N. Y. Home office, 120 Broadway.

NEW YORK, *Sept. 9th*, 1890.

Take notice that a premium of $258.00 required to renew policy No. 32025 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, but if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

116 Office of the Provident Savings Life Assurance Society of N. Y. Home office, No. 120 Broadway.

NEW YORK, *Sept. 9th*, 1890.

The premium $258.00 required to renew policy No. 32025 in this society will, if such policy be in force on that day, become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums, except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Address, Thos. L. Nixon, Esq., Tacoma, Wash.

Whereupon counsel for the said plaintiff then and there objected to the introduction of the said copies of said notices on the
117 ground that it had already been shown by the deposition of the said William E. Stevens that the deponent was not the party who mailed the same.

Whereupon his honor, the said judge, sustained the objection upon the ground that the answer to the said fifteenth interrogatory did not state facts within the personal knowledge of the deponent.

Whereupon counsel for the defendant excepted to the ruling of his honor the said judge, excluding said notices, and said exception was by his honor the said judge allowed.

Whereupon the said defendant, further to prove and maintain the said issue on its part, read in evidence the deposition of Henry H. Meeder, certain questions and answers whereof were as follows:

Q. 1. What is your name, residence, age and occupation?

A. 1. Henry H. Meeder, residence South Orange, New Jersey, age 22, occupation insurance clerk.

Q. 2. How long have you been in the employ of The Provident Savings Life Assurance Society, and in what capacity?

A. 2. 5 years as clerk.

Q. 3. Was it any part of your duties to mail policy-holders notices of payment of premiums about to become due upon their policies?

A. 3. Yes; from July 28, 1890, to Aug. 8, 1890.

Q. 4. Did you at any time mail to Thomas L. Nixon, of Tacoma, Washington, notice of the premium falling due on September 12, 1890, upon his policy No. 18647? If so, attach to your answer hereto a true copy of such notice, including the address
118 thereon and state when and where you mailed the same.

A. 4. Yes; I attach an exact copy of that notice hereto marked "Exhibit 1." I personally deposited in the general post-office of New York city on the 4th day of August, 1890, the original notice of which this is a copy, addressed to Thomas L. Nixon, Tacoma, Washington, that being his last known post-office address. The mailing of such notice was at that time a part of my duty as clerk.

And thereupon the said defendant further to prove and maintain the said cause on its part, offered in evidence the copy of the notice of premium falling due September 12, 1890, to which reference was made in the answer of the said Henry H. Meeder to the fourth interrogatory above set forth, which said copy of said notice is in the words and figures following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Aug.* 4, 1890.

Take notice that a premium of $15.85 required to renew policy No. 18647 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 12th day of September, 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy
119 contract. All premiums are due at the office of the society in the city of New York, but for the convenience of policyholders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums, except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Whereupon, counsel for said plaintiff then and there objected to the introduction of the said copy of the said notice, on the ground that it was incompetent, irrelevant and immaterial; that there was nothing in the deposition to show that any postage was prepaid on the said notice; that it was not the evidence that the statute expressly states shall be the evidence of the mailing of the notice, and for the further reason, that it did not affirmatively appear that the notice was mailed to the last known post-office address of the said Thomas L. Nixon, as it appeared on the books of the company.

Whereupon, his honor, the said judge, sustained the objection, and in sustaining the said objection used the following language, to wit:

"I do not think that the evidence shows this statute to have been complied with. The postal laws of the United States require
120 the postage paid at the place of mailing in order to insure the carriage of the mail by the Government, and this statute of New York makes one of the necessary things preceding the right to forfeit an insurance policy upon which any premium has been paid, the sending of a notice by mail, and the prepayment of the postage. It would be an evasion of this law to make out a proper notice, address it properly and put it in the post-office without prepaying the postage, because it would not serve the purpose intended; it would not go. Now, if the payment of the postage is a necessary thing, it is necessary to prove it, where the right of forfeiture is claimed by compliance with the law. This statute provides that the affidavit

of any officer, clerk or agent of the company that he has mailed the notice, is presumptive evidence that it was duly mailed—that notice was duly given; but I do not think it allowable to give this statute such an interpretation as to hold sufficient the mere statement, 'I solemnly swear that I duly mailed the notice required in this case.' I think to make his affidavit presumptive proof he must state the facts, constituting compliance with the law, and that affidavit is then received as presumptive evidence of those facts. I think, also, that while the contract in the policy requires the payment of premiums to be made on the very day that they become due, that contract is like any other provisions of a contract between persons—its terms may be waived or departed from by the subsequent agreement or conduct of the parties. Now, here is a case in which the insurance society accepted from Mr. Nixon a sum of money that he did not owe by mis-

121 take; upon attention being called to it, the mistake was acknowledged, and the company, by its officers, voluntarily proposed in writing to rectify the mistake by deducting the amount of the overpayment out of the next installment of premium that should become due. Now, that gave Mr. Nixon the right, if he paid his premium on the day it was due, to have that amount deducted; if he did not pay the balance it gave the right to the company to forfeit his insurance on that day, but it required the company to give him back the money that they had under their agreement to make the reduction. According to the evidence shown so far they did not do that, and I think there is impliedly a credit given Mr. Nixon upon the policy to that amount as premium, that it would carry this policy at least six days beyond the date named in the notice. I think the company had the right to send him a notice requiring the payment to be made on the 12th of September; but on the 12th of September having this amount of money to his credit, which they had agreed in effect to apply as premium and still retaining it, the policy did not expire and they did not have the right to forfeit it on that day without giving another notice notifying him that the policy would expire on the 18th or whatever day it would legally expire without further payment. I think the notice is insufficient for two reasons. One is that it is not proved that the notice was sent postage paid, and another is that on the date on which Mr. Nixon's rights could be lawfully and finally terminated was not earlier than the 18th, while this notice states as the date the 12th. For these reasons I will sustain the objection."

122 Whereupon counsel for the defendant excepted to the ruling of his honor the said judge, excluding said copy of said notice and said exception was by his honor the said judge allowed.

And thereupon the said defendant further to prove and maintain the said issue on its part read in evidence the deposition of E. S. Prosser certain questions and answers whereof together with the objections thereto, the rulings thereon and the exceptions to said rulings were as follows:

Q. 1 What is your name, residence, age and occupation?

A. 1. E. Seward Prosser, residence Englewood, New Jersey, age, 23 years, occupation, insurance clerk.

Q. 2. How long have you been in the employ of the Provident Savings Life Assurance Society, and in what capacity?

A. 2. From October, 1887, until the present time as clerk.

Q. 3. Was it any part of your duties to mail to policy-holders notices of payments or premiums about to become due upon their policies?

A. 3. Yes. From Oct. 30th, 1889, to Oct. 26, 1892, except when absent on vacation or sickness.

Q. 4. Did you at any time mail to Thomas L. Nixon of Tacoma, Washington, notice of a premium falling due October 11, 1890, upon his policy No. 32025? If so, attach to your answer hereto a true copy of such notice including the address thereon, and state when and where you mailed the same.

A. 4. Yes. On the 9th day of September, 1890, I deposited
123 in the general post-office in New York city a notice addressed to Thomas L. Nixon, Tacoma, Washington. Said notice stated that a premium of $258.00, required to renew policy No. 32025, would become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of October, 1890, and that if said premium was not paid on or before said date, said policy would thereupon become forfeited and void. A slight change was made at about this time in the blank form used in these notices, and I cannot swear which was used, but according to my best knowledge and belief the form used was one of the two forms hereto annexed and marked "Exhibits 1 and 2," respectively.

Whereupon counsel for the said plaintiff then and there moved his honor, the said judge, to strike out from the said answer to the fourth interrogatory of the said E. S. Prosser, as above given, the following language:

"Said notice stated that a premium of $258.00 required to renew policy No. 32025 would become due and payable to the secretary of the society at its office No. 120 Broadway, in the city of New York, on the 11th day of October, 1890, and that if said premium was not paid on or before said date, said policy would thereupon become forfeited and void." And also the following language: "A slight change was made at about this time in the blank form used in these notices, and I cannot swear which was used, but according to my best knowledge and belief the form used was one of the two forms hereto annexed and marked 'Exhibits 1 and 2,' respectively,"
124 on the ground that said evidence was not the best evidence, and was incompetent, irrelevant and immaterial.

Whereupon his honor, the said judge, sustained the motion to strike out the said language upon the ground that it was not the best evidence, and that the notice itself was the best evidence.

Whereupon counsel for the defendant excepted to the ruling of his honor, the said judge, excluding said evidence, and said exception was by his honor, the said judge, allowed.

And thereupon the said defendant further to prove and maintain the said issue on its part, offered in evidence the two forms of notices of the premium falling due October 11, 1890, to which reference was made in the answer of the said E. S. Prosser to the fourth interrogatory above set forth, which said copies of said notices were in the words and figures following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, 120 Broadway.

NEW YORK, *Sept. 9th*, 1890.

Take notice that a premium of $258.00 required to renew policy No. 32025, in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

125 All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Sept. 9th*, 1890.

The premium $258.00 required to renew policy No. 32025 in this society will, if such policy be in force on that day, become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, pay-
126 ments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Address:

THOS. L. NIXON, Esq.,
Tacoma, Wash.

Whereupon counsel for the said plaintiff then and there objected to the introduction of the copies of said notices on the ground that they were incompetent, irrelevant and immaterial: that there was nothing in the deposition to show that any postage was prepaid on the said notice: that it was not the evidence that the statute expressly states shall be evidence of the mailing of the notice, and for the further reason that it did not affirmatively appear that the notice was mailed to the last known post-office address of the said Thomas L. Nixon, as it appeared on the books of the company.

Whereupon his honor, the said judge, sustained the objection upon the ground that it was not shown that the postage was prepaid on the notice that was sent.

Whereupon counsel for the defendant excepted to the ruling of his honor, the said judge, excluding said copies of said notices, and the said exception was by his honor, the said judge, allowed.

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And thereafter, to wit: after all the evidence, both on behalf of the plaintiff and defendant, had been introduced, counsel for the defendant, in writing requested his honor, the said judge, to give the jury certain instructions, among which were the following, to wit:

"That the contract of insurance, as to each period of extension, whether it be quarterly or otherwise, for which a premium is paid in advance, is indivisible, and there can be no part payment to keep the policy alive for a portion of such quarter, or other period, except by express agreement between the company and the insured. If, therefore, Thomas L. Nixon failed to pay the balance that was due, over and above the $1.25, to wit, $15.85, on the 12th day of September, 1890, or did not perform the conditions required of him by the contract in furnishing a certificate of good health and paying the said balance within thirty days after that date, then and in either case the policy ceased and determined and was of no effect thereafter, and you should find for the defendant, as to the $5,000 policy," and also,

"If from the evidence you find that the defendant, The Provident Savings Life Assurance Society, offered to deduct from the September premium the $1.25 overpaid on the June premium, and the said offer was accepted by Thomas L. Nixon, or his agent, and did so deduct the $1.25 from the September premium and did mail to the assured the statutory notice stating the exact amount of the balance so due, the original contract was not altered and the defendant did not waive any compliance with its requirements in the time, place and manner of the payment of the balance

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of said premium due September 12, 1890, or its right to forfeit the policy; and Thomas L. Nixon was as absolutely bound to pay the residue of the premium then due, to wit, $15.85, on said 12th day of September, 1890, as if there had been no deduction made by reason of the overpayment, and the whole amount, to wit, $17.10 had been demanded, and you must, therefore, find for the defendant as to the $5,000 policy," and also,

"If, therefore, you find from the evidence that there has been no waiver on the part of the defendant of its right to forfeit the two policies sued upon in this action by reason of the non-payment of premiums when the same became due, and that the defendant company at least thirty and not more than sixty days prior to the 12th day of September, 1890, duly addressed and mailed to Thomas L. Nixon, at his last known post-office address, postage prepaid, a written or printed notice, in due form of law, stating among other things the amount of the premium that would become due on said 12th day of September, 1890, upon his policy for $5,000, issued by the defendant; and also that said defendant at least thirty and not more than sixty days prior to the 11th day of October, 1890, duly addressed and mailed to Thomas L. Nixon, at his last known post-office address, postage prepaid, a written or printed notice, in due form of law, stating among other things the amount of the premium that would become due, on said 11th day of October,
129 1890, upon his $15,000 policy, issued by the defendant, then your verdict must be for the defendant."

All of which said requests for instructions were by the said judge refused, to which said refusal of the said judge to instruct the jury as requested, counsel for the defendant excepted, and the said exception was by his honor, the said judge, allowed.

But on the contrary his honor, the said judge, gave certain instructions to the jury, amongst which said instructions were the following, to wit:

"GENTLEMEN OF THE JURY: This action is founded upon two policies of insurance upon the life of Thomas Lea Nixon; the first one of these policies is for the sum of $5,000. It has been proved that this policy was issued and there has been no evidence introduced to avoid the liability of the company upon the policy which they issued, and you are, therefore, instructed to find a verdict in favor of the plaintiff, for the amount due upon this policy;" and also,

"The defendant has entirely failed to prove that a written or printed notice was mailed and the postage paid from the home office of the company in New York. So far as the defense set up in the answer that notice was sent from New York, by being deposited in the United States post-office in New York is concerned, the evidence has wholly failed. No legal evidence of the sending of such notice has been introduced, and I instruct you to disregard all that you have heard in the way of evidence on the trial of sending of any notice from New York," and also:

"The defendant has the burden of proof, and to entitle de-
130 fendant to a decision in its favor on this point, the evidence that the notice was given, as claimed, must be a fair preponderance of all the evidence in the case relating to that subject. If there is a preponderance, that is a greater weight of evidence against defendant than there is in favor of defendant's contention on this point, or even if the evidence equally balances, your decision would have to be against the defendant."

To all of which said instructions of his honor the said judge, counsel for defendant excepted, which said exceptions were by his honor, the said judge, allowed.

And thereafter, to wit: on the 18th day of March, 1895, defendant duly served and filed its motion for a new trial, which said motion for a new trial came on regularly to be heard in open court before his honor, the said judge, on the 20th day of March, 1895, and after argument by counsel, was by his honor, the said judge, denied.

Whereupon counsel for the defendant excepted to the ruling of his honor, the said judge, in denying the motion for a new trial, which said exception was by his honor, the said judge, allowed.

And forasmuch as the facts aforesaid and the decisions of the court thereon do not appear of record, the defendant prays that this, its bill of exceptions, may be allowed. And the said bill of exceptions having been duly filed within the extended time granted therefor by order of this court, duly made and entered within ten days after the rendition of the verdict in the above-entitled cause, the said bill of exceptions is hereby allowed accordingly.

[SEAL.] C. H. HANFORD, *Judge.*

131 Filed this 29th day of March, 1895.

Received a copy of the above proposed bill of exceptions this 29th day of March, 1895.

CARROLL, WARBURTON, PALMER & RELFE,
Att'ys for Plaintiff.

(And endorsed on the back thereof:) In the circuit court of the United States, district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society of New York, defendant. Bill of exceptions. Filed March 29th, 1895, in the U. S. circuit court. A. Reeves Ayres, clerk. By R. M. Hopkins, deputy. Walker & Fitch, attorneys for defendant.

In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, vs. THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant.	Case No. 308. Amendments to Bill of Exceptions.

Amendments to Bill of Exceptions.

Be it remembered, that afterward, to wit: on the 23d, 25th and 26th days of February, in the year of our Lord one thousand eight hundred and ninety-five, at a stated term of the said court, begun and holden in Tacoma, in and for the district of Washington, western division, before his honor, C. H. Hanford, district judge, the issue joined in the above-stated cause between the said parties
132 came on to be tried before the said judge sitting with a jury; the plaintiff being represented by Messrs. Thomas Carroll, Leroy A. Palmer and Stanton Warburton, and the defendant by Messrs. Walker & Fitch; and upon the trial of that issue the attorneys of the said defendant to maintain and prove the said issue on its part offered in evidence the letter from W. C. Chidester to Hon. Shepard Homans, dated October 31, 1890, which said letter was admitted in evidence, the same being in the words and figures following, to wit:

"Hon. Shepard Homans, New York city.

"DEAR SIR: I think we have just missed having to pay a loss of $20,000 on Thos. L. Nixon, as his wife came into the office this a. m. to pay his premium due Oct. 11th and Sept. 26th. I told her that the premiums were past due and could not be accepted by the bank, as to my knowledge Mr. Nixon could not give a certificate of health, as he is now in a critical condition, with pernicious blood-poisoning. I am sorry for Mrs. Nixon, but I felt, in justice to the company, this statement should be made. I immediately went to the bank and notified them of the circumstances. They said they had no such instructions. I assured them of the facts, and they said they would not accept the premium. You had better have the bank notified of the rule in regard to accepting lapsed premiums.

"Yours very truly, W. C. CHIDESTER."

And thereupon the said defendant, further to prove and
133 maintain the said issue on its part, offered in evidence the letter from W. C. Chidester to Hon. Shepard Homans, dated July 29th, 1891, which said letter was admitted in evidence, the same being in the words and figures following, to wit:

"TACOMA, WASH., *July 29th*, 1891.

"Hon. Shepard Homans, pres. Provident Savings Life Assurance Society, New York city.

"D'R MR. HOMANS: Mrs. T. L. Nixon, the widow of your former

agent and policy-holder of policy No. 18647, called on me this morning to see if there was not something coming to her from this policy. His other policy for $15,000.00 I assured her was lapsed beyond any question at the time she tendered the last payment.

"The assured died April 16th, 1891. The last receipt she has is dated June 12th, 1890, for $18.35, which carried the policy up to Sept. 12th, 1890. There was an overcharge on the quarterly expense charge of $1.25, which I reported at the time, and in a letter in answer to my report, Mr. Stevens said that it was an error, and the overcharge would be applied to the next quarterly premium. She tendered the premium on her return from the East, about the middle of October. The overcharge of $1.25, she claims, should have carried the policy for the lapsed period.

"I wish you could see your way clear to allow her something on this policy, as Mrs. Nixon is a good friend of the Provident Savings, and always advocated its plans, and did more to help us here than any other private individual.

"The lapsing of all of Mr. Nixon's insurance, $57,000, by the
134 carelessness of a clerk, is working considerable hardship on her, and anything that could be allowed on this policy which has been paid on for nearly five years, would be very acceptable at this time. I await your answer.

"Very resp'f'y, W. C. CHIDESTER."

And thereupon, the said defendant further to prove and maintain the said issue on its part, offered in evidence the letter from M. L. Stevens to W. C. Chidester, dated August 15th, 1891, which said letter was admitted in evidence, the same being in the words and figures following, to wit:

"NEW YORK, 29 BROADWAY, *August* 15, 1891.

"Dictated.

"W. C. Chidester, Esq., California block, Tacoma, Wash.

"DEAR SIR: Your esteemed favor of the 29th ult., relative to the policies of the late T. L. Nixon in this society, has been received and referred to this department for reply.

"Confining our attention solely to policy No. 18647, which seems to be the one concerning which Mrs. Nixon thinks she may have some claim, we have to say:

"First, while it is true that there was a credit of $1.25 upon the premium due Sept. 12th, that fact in no way modifies the other fact that the balance of that quarterly premium was due Sept. 12th, 1890, and that the policy would, by its terms, expire if that
135 balance was not paid on or before that date. We think you will see the force of this proposition and that neither you nor any counselor of Mrs. Nixon can possibly advise her otherwise.

"Second. Even if what we have stated in our first proposition were not true and that the balance was not due until the $1.25 had been exhausted in carrying the risk, it would still be true that the society is under no liability on account of this policy; this is ap-

parent from your own statement of the case. The premium was not tendered until about the middle of October." Suppose it was tendered Oct. 12th, or exactly one month after the original due date; now, the quarterly premium was $17.10 and the premium for one month would have been one-third of this or $5.70 which you see the $1.25 failed of paying. To put the matter exactly, the premium was $.19 per day and the $1.25, if applied to keep the policy in "force (which we have already said we cannot admit) would have carried the policy for six days and a fraction.

"You therefore see that upon either hypothesis Mrs. Nixon can have no claim under this policy.

"Death claims are paid solely from the contributions of living policy-holders, and we do not feel that we have any right whatever as trustees in their behalf, to use any of their money except in the recognition of legal and clearly established claims and this, however much we may sympathize with beneficiaries under lapsed policies who may suffer from the results of the carelessness or inattention of their servants who have been charged with the duty of paying premiums."

136 "We are, however, very kindly disposed towards Mrs. Nixon, and any services we can possibly render in her behalf we shall most gladly do so.

"We note that you speak of $57,000 of insurance lapsed by the carelessness of a clerk. Now, it is quite possible that some of these policies are in companies where there is a legal reserve attached to the policy, which reserve, under the law of the State where the company is located, must be applied to continue the insurance. If Mrs. Nixon will give us the details as to these policies, that is, name of company, date of issue, form of policy, number of premiums paid and date of lapse, we will look them over carefully and see if she has any rights under them, we will take pleasure in advising her, but we must decline to recognize any liability whatever on account of either of Mr. Nixon's policies in this society.

"Trusting this may be satisfactory, we are

"Yours truly,

"(Signed) M. L. STEVENS,

"*Sup't Claim Dep't.*"

And thereupon, the said plaintiff to maintain and prove the said issue on her part read in evidence the cross-interrogatories and answers thereto contained in the deposition of E. S. Prosser, which said cross-interrogatories and the answers thereto are as follows, to wit:

Q. 1. Are you positive that the premium notice mentioned in the direct interrogatories was not mailed by you to Thomas L. Nixon on the 11th day of September, 1890?

137 A. 1. I am positive that it was not on the 11th, but was mailed on the 9th.

Q. 2. Do you personally recollect having with your own hands placed the said premium notice in either a U. S. letter box, or U. S. letter box in the post-office in New York?

A. 2. In answer to that question I will say that my answer is founded on records made at the time.

Q. 3. Attach to your answer to these cross-interrogatories a paper containing the address of Thomas L. Nixon, in September, 1890, in your handwriting?

A. 3. In answer to this interrogatory, it was not my business to take out these notices, but simply my duty to mail them, but I attach the paper requested.

Q. 4. How long did it take in September, 1890, for a letter in the ordinary course of the U. S. mail to reach Tacoma, Wash., from New York city, New York?

A. 4. I have no knowledge of that.

And thereafter, to wit: after defendant further to prove and maintain the said issue on its part, had offered in evidence two forms of notices of the premium falling due October 11th, 1890, to which reference was made in the answer of the said E. S. Prosser to the fourth interrogatory, counsel for the said plaintiff then and there objected to the introduction of the copies of said notices on the ground that they were incompetent, irrelevant and immaterial; that there was nothing in the deposition to show that any postage was prepaid on the notice; that it was not the evidence that the statute expressly states shall be evidence of the mailing of the
138 notice; that it did not affirmatively appear that the notice was mailed to the last known post-office address of the said Thomas L. Nixon as it appeared on the books of the company, and for the further reason that the testimony of the witness shows that he was incompetent to testify; that his testimony shows that he was not testifying from his memory, but from a record not shown to have been made by himself, nor at the time.

Whereupon, his honor, the said judge, sustained the objection upon the ground that it was not shown that the postage was prepaid on the notice, and upon the further ground that the witness was not testifying from his memory but from a record not shown to have been made by himself.

Whereupon, counsel for defendant excepted to the ruling of his honor, the said judge, excluding said notices, and the said exceptions was by his honor, the said judge, allowed.

And forasmuch as the facts aforesaid and the decisions of the court thereon do not appear of record, and the plaintiff deems such facts and decisions necessary to a proper presentation of this case on appeal, respectfully prays that these, her amendments to the bill of exceptions on file herein may be allowed.

And the said amendments to the bill of exceptions having been duly filed, and no dissent thereto having been offered, the said amendments are hereby allowed accordingly.

[SEAL.] C. H. HANFORD, *Judge.*

Filed this 29th day of March, 1895.

139 (And endorsed on the back thereof:) No. 308. In the circuit court of the United States, district of Washington,

western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society of New York, defendant. Amendment to bill of exceptions. Filed March 29th, 1895, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy. Walker & Fitch, 607–'9 Fidelity Trust building, Tacoma, Washington, attorneys for defendant.

And afterwards, to wit: on the 24th day of April, 1895, there was duly filed in said court in said cause an assignment of errors in the words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant.	Case No. 308. At Law.

Assignment of Errors.

The defendant in this action in connection with its petition for a writ of error makes the following assignment of errors, which it avers occurred upon the trial of the cause, to wit:

I. The court erred in the rejection of evidence offered by the defendant upon said trial in the following instances, to wit:

140 (1.) In rejecting portions of the evidence of William E. Stevens given by deposition, which evidence was in substance that notices of premiums falling due upon the $5,000 policy of June 12, 1890, and September 12, 1890, were sent to Thomas L. Nixon by the secretary of the defendant company, and that they were mailed from New York on the 9th day of May, 1890, and the 4th day of August, 1890, respectively.

(2.) In rejecting portions of the evidence of William E. Stevens given by deposition, which evidence was in substance that a notice of the premium falling due upon the $15,000 policy on October 11, 1890, was mailed to Thomas L. Nixon by the society from New York on the 9th day of September, 1890.

(3.) In rejecting copies of the notices of premiums upon the $5,000 policy falling due June 12, 1890, and September 12, 1890, respectively, identified and referred to by William E. Stevens and offered in connection with his said deposition, which said copies of said notices are in words and figures, following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *May 9th*, 1890.

Take notice that a premium of $18.35 required to renew policy No. 18647 in this society, will if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the

society at its office, No. 120 Broadway, in the city of New York, on the 12th day of June, 1890, and if not paid on or before said date, the policy and all payments made thereon will become for-
141 feited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates, to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums, except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Aug.* 4, 1890.

Take notice that a premium of $15.85 required to renew policy No. 18647 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society at its office No. 120 Broadway, in the city of New York, on the 12th day of Sept., 1890, and if not paid on, or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

142 All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on, or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon the receipt of a certificate of good health.

Form 248.

(4.) In rejecting copies of the two forms of notices of the premium upon the $15,000 policy falling due October 11, 1890, identified and referred to by William E. Stevens, and offered in connection with his said deposition, which said copies of said notices are in the words and figures following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, 120 Broadway.

NEW YORK, *September 9th*, 1890.

Take notice that a premium of $258.00, required to renew policy No. 32025 in this society, will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 120 Broadway, in the city of New
143 York, on the 11th day of October, 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary*.

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Sept. 9th*, 1890.

The premium $258.00 required to renew policy No. 32025 in this society will, if such policy be in force on that day, become due and payable to the secretary of the society at its office No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, and if not paid on or before said date, the policy and all payment made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

144 All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary*.

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

(5.) In rejecting the copy of the notice of premium upon the $5,000 policy falling due September 12, 1890, identified and referred to by Henry H. Meeder, and offered in connection with his said deposition, which said copy of said notice is in the words and figures following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y
Home office, No. 120 Broadway.

NEW YORK, *Aug.* 4, 1890.

Take notice that a premium of $15.85 required to renew policy No. 18647 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 120 Broadway, in the city of New York, on the 12 day of Sept., 1890, and if not paid on or before said
145 date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefore, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

(6.) In rejecting portions of the evidence of E. S. Prosser, given by deposition, which evidence was in substance that on the 9th day of September, 1890, he deposited in the general post-office in New York city a notice addressed to Thomas L. Nixon, Tacoma, Washington; that said notice stated that a premium of $258.00, required to renew policy No. 32025, would become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of October, 1890, and that if said premium was not paid on or before said date, said policy would thereupon become forfeited and void; that a slight change
146 was made at about that time in the blank form used in the notices, and that he could not swear which form was used, but that according to his best knowledge and belief the form used was one of two forms annexed and marked "Exhibits 1 and 2," respectively.

(7.) In rejecting copies of the two forms of notices of the premium upon the $15,000 policy falling due on October 11, 1890, identified and referred to by E. S. Prosser, and offered in connec-

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, 120 Broadway.

NEW YORK, *September 9th*, 1890.

Take notice that a premium of $258.00, required to renew policy No. 32025 in this society, will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 120 Broadway, in the city of New
143 York, on the 11th day of October, 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

NEW YORK, *Sept. 9th*, 1890.

The premium $258.00 required to renew policy No. 32025 in this society will, if such policy be in force on that day, become due and payable to the secretary of the society at its office No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, and if not paid on or before said date, the policy and all payment made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

144 All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

(5.) In rejecting the copy of the notice of premium upon the $5,000 policy falling due September 12, 1890, identified and referred to by Henry H. Meeder, and offered in connection with his said deposition, which said copy of said notice is in the words and figures following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y
Home office, No. 120 Broadway.

NEW YORK, *Aug.* 4, 1890.

Take notice that a premium of $15.85 required to renew policy No. 18647 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 120 Broadway, in the city of New York, on the 12 day of Sept., 1890, and if not paid on or before said
145 date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefore, signed by the president or secretary.

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

(6.) In rejecting portions of the evidence of E. S. Prosser, given by deposition, which evidence was in substance that on the 9th day of September, 1890, he deposited in the general post-office in New York city a notice addressed to Thomas L. Nixon, Tacoma, Washington; that said notice stated that a premium of $258.00, required to renew policy No. 32025, would become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of October, 1890, and that if said premium was not paid on or before said date, said policy would thereupon become forfeited and void; that a slight change
146 was made at about that time in the blank form used in the notices, and that he could not swear which form was used, but that according to his best knowledge and belief the form used was one of two forms annexed and marked "Exhibits 1 and 2," respectively.

(7.) In rejecting copies of the two forms of notices of the premium upon the $15,000 policy falling due on October 11, 1890, identified and referred to by E. S. Prosser, and offered in connec-

tion with his said deposition, which said copies of said notices are in the words and figures following, to wit:

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, 120 Broadway.

NEW YORK, *Sept. 9th*, 1890.

Take notice that a premium of $258.00 required to renew policy No. 32025 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary of the society, at its office, No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society, in the city of New York, but for the convenience of policy-holders payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

147

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

Office of the Provident Savings Life Assurance Society of N. Y.
Home office, 220 Broadway.

NEW YORK, *Sept.* 9, 1890.

The premium of $258 required to renew policy No. 32025 in this society will, if such policy be in force on that day, become due and payable to the secretary of the society, at its office, No. 120 Broadway, in the city of New York, on the 11th day of Oct., 1890, and if not paid on or before said date, the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract.

All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders, payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

148

Should you change your post-office address, please notify the secretary of the society in writing.

WM. E. STEVENS, *Secretary.*

N. B.—Agents are forbidden to receive overdue premiums except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

Form 248.

II.

The court erred in making the charge to the jury in refusing to state propositions requested by defendant in the following instances, to wit:

"That the contract of insurance as to each period of extension, whether it be quarterly or otherwise, for which a premium is paid in advance, is indivisible, and there can be no part payment to keep the policy alive for a portion of such quarter or other period except by express agreement between the company and the insured. If, therefore, Thomas L. Nixon failed to pay the balance that was due over and above the $1.25, to wit: $15.85, on said 12th day of September, 1890, or did not perform the conditions required of him by the contract in furnishing a certificate of good health and paying the said balance within thirty days after that date, then and in either case the policy ceased and determined and was of no effect thereafter, and you should find for the defendant as to the $5,000 policy;" and also,

"If from the evidence you find that the defendant, The Provident Savings Life Assurance Society, offered to deduct from the September premium the $1.25 overpaid on the June premium, and the
149 said offer was accepted by Thomas L. Nixon or his agent, and did so deduct the $1.25 from the September premium and did mail to the assured the statutory notice stating the exact amount of the balance so due, the original contract was not altered and the defendant did not waive any compliance with its requirements in the time, place and manner of the payment of the balance of said premium due September 11, 1890, or its right to forfeit the policy; and Thomas L. Nixon was as absolutely bound to pay the residue of the premium then due, to wit: $15.85, on said 12th day of September, 1890, as if there had been no deduction made by reason of the overpayment, and the whole amount, to wit: $17.10 had been demanded, and you must, therefore, find for the defendant as to the $5,000 policy," and also,

"If, therefore, you find from the evidence that there had been no waiver on the part of the defendant of its right to forfeit the two policies sued upon in this action by reason of the non-payment of premiums when the same became due, and that the defendant company at least thirty, and not more than sixty days prior to the 12th day of September, 1890, duly addressed and mailed to Thomas L. Nixon, at his last known post-office address, postage prepaid, a written or printed notice, in due form of law, stating, among other things the amount of the premium that would become due on said 12th day of September, 1890, upon his policy for $5,000 issued by the defendant; and also that said defendant at least thirty, and not more than sixty days prior to the 11th day of October, 1890,

150 duly addressed and mailed to Thomas L. Nixon, at his last known post-office address, postage prepaid, a written or printed notice, in due form of law, stating among other things the amount of the premium that would become due on said 11th day of October, 1890, upon his $15,000 policy, issued by the defendant, then your verdict must be for the defendant."

III.

The court erred in using the following language in the charge to the jury, to wit:

"GENTLEMEN OF THE JURY: This action is founded upon two policies of insurance upon the life of Thomas Lea Nixon. The first one of these policies is for the sum of $5,000. It has been proved that this policy was issued, and there has been no evidence introduced to avoid the liability of the company upon the policy which they issued, and you are, therefore, instructed to find a verdict in favor of the plaintiff for the amount due upon this policy;" and, also,

"The defendant has entirely failed to prove that a written or printed notice was mailed, and the postage paid from the home office of the company in New York. So far as the defense set up in the answer that notice was sent from New York by being deposited in the United States post-office in New York is concerned, the evidence has wholly failed. No legal evidence of the sending of such notice has been introduced, and I instruct you to disregard all that you have heard in the way of evidence on the trial of sending of any notice from New York;" and, also,

"The defendant has the burden of proof, and to entitle the 151 defendant to a decision in its favor on this point, the evidence that the notice was given, as claimed, must be a fair preponderance of all the evidence in the case relating to that subject. If there is a preponderance, that is a greater weight of evidence against the defendant than there is in favor of defendant's contention on this point, or even if the evidence equally balances, your decision would have to be against the defendant."

IV.

The court erred in overruling the motion of defendant for a new trial.

V.

The court erred in entering judgment in favor of the plaintiff, and against the defendant.

WALKER & FITCH,
Attorneys for Defendant.

(And endorsed on the back thereof:) No. 308. In the circuit court of the United States, district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society of New York, defendant. Assignment of errors. Filed April 24th, 1895. A. Reeves Ayres, clerk. Walker & Fitch, 607–609 Fidelity Trust building, Tacoma, Washington, attorneys for defendant.

And afterwards, to wit, on the 24th day of April, 1895, there was duly filed in said court, in this cause a supersedeas and cost bond, in the words and figures as follows, to wit:

152 In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff,
vs.
THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant. } Case No. 308.

Supersedeas and Cost Bond.

Know all men by these presents that the Provident Savings Life Assurance Society of New York, as principal, and T. B. Wallace and John S. Baker, as sureties, are held and firmly bound unto the plaintiff, Cora E. Nixon, in the full and just sum of twenty-five thousand dollars ($25,000) to be paid to the said plaintiff, Cora E. Nixon, her certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a circuit court of the United States, for the district of Washington, western division, in a suit pending in said court, between Cora E. Nixon, plaintiff, and the Provident Savings Life Assurance Society of New York, defendant, a judgment was rendered against the said Provident Savings Life Assurance Society of New York, and the said Provident Savings Life Assurance

153 Society of New York, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Cora E. Nixon citing and admonishing her to be, and appear at a session of the United States circuit court of appeals for the ninth circuit, to be holden at the city of San Francisco, in said circuit, on the 3rd day of June next.

Now, the condition of the above obligation is such, that if the said Provident Savings Life Assurance Society of New York shall prosecute said writ of error to effect and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, [SEAL.]
By one of its Attorneys.
GEORGE H. WALKER. [SEAL.]
T. B. WALLACE. [SEAL.]
JNO. S. BAKER. [SEAL.]

Sealed and delivered in the presence of—
H. J. CARMAN.
F. L. DENMAN.

STATE OF WASHINGTON, } ss:
County of Pierce, }

T. B. Wallace and Jno. S. Baker, whose names are subscribed to the foregoing bond, being severally sworn each for himself deposes and says:

That he is a resident and freeholder within the district of Washington, western division, and that he is, in his own right,
154 worth twenty-five thousand dollars ($25,000) over and above all just debts and liabilities, exclusive of property exempt from execution.

T. B. WALLACE.
JNO. S. BAKER.

Subscribed and sworn to before me this 20th day of April, 1895.

F. L. DENMAN,
Notary Public, Residing at Tacoma,
Pierce County, Washington.

Approved by—
C. H. HANFORD,
District Judge.

Approved in all respects both as to form and substance.
CARROLL, WARBURTON, PALMER & RELFE,
Attorneys for Plaintiff.

(And endorsed on the back thereof:) No. 308. In the circuit court of the United States, district of Washington, western division. Cora E. Nixon, plaintiff, *vs.* Provident Assurance Society of New York, defendant. Supersedeas and cost bond. Filed April 24th, 1895. A. Reeves Ayers, clerk. Walker & Fitch, 607–609 Fidelity Trust building, Tacoma, Washington, attorneys for defendant.

And afterwards, to wit: on the 24th day of April, 1895, there was duly filed in said court, in said cause a petition for writ of error in the words and figures as follows, to wit:

155 In the Circuit Court of the United States for the District of Washington, Western Division.

CORA E. NIXON, Plaintiff, *vs.* THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, Defendant.	}	Case No. 308. At Law.

Petition for Writ of Error.

And now comes The Provident Savings Life Assurance Society of New York, the defendant herein, and says: That on or about the 20th day of March, 1895, this court entered judgment herein, in favor of the plaintiff and against this defendant, in which judgment and the proceedings had prior thereunto in this cause certain errors

were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this defendant prays that a writ of error may issue in this behalf to the United States circuit court of appeals, for the ninth circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said circuit court of appeals.

WALKER & FITCH,
Attorneys for Defendant.

(And endorsed on the back thereof:) No. 308. In the circuit court of the United States, District of Washington, western division.
156 Cora E. Nixon, plaintiff, *vs.* Provident Savings Life Assurance Society of New York, defendant. Petition for writ of error. Filed April 24th, 1895. A. Reeves Ayres, clerk. Walker & Fitch, 607–9 Fidelity Trust bldg., Tacoma, Washington, attorneys for defendant.

Certificate to Transcript.

UNITED STATES OF AMERICA, *District of Washington, Western Division,* } *ss:*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify the writings hereto attached, to be a true transcript of the record, proceedings and exhibits in case No. 308, Cora E. Nixon, plaintiff, against Provident Savings Life Assurance Society of New York, defendant, as the same remain on file and of record in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at my office in the city of Tacoma, in the said district, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

A. REEVES AYRES, *Clerk,*
By SAMUEL BRIDGES, *Deputy.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Washington, Greeting:

Because in the record and proceeding and also in the ren-
157 dition of the judgment of a plea which is in the said circuit court, before you, between Cora E. Nixon, plaintiff, and The Provident Savings Life Assurance Society of New York, defendant, a manifest error hath happened, to the great damage of the said defendant as by its complaint appears, and it being fit, that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby

commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of appeals for the ninth judicial circuit, together with this writ, so that you have the same at San Francisco, in the State of California, within thirty days from the date of this writ, in the said court, to be there and then held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals *court* may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of April, [SEAL.] in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Writ of error is hereby allowed.

C. H. HANFORD,
U. S. District Judge, Presiding in said Circuit Court.

Attest: A. REEVES AYRES, *Clerk.*

158 We hereby this 27th day of April, 1895, accept due former service of the within writ of error on behalf of Cora E. Nixon, defendant in error.

CARROLL, WARBURTON, PALMER & RELFE,
Attorneys for Cora E. Nixon.

U. S. MARSHAL'S OFFICE,
WESTERN DIVISION, DISTRICT OF WASHINGTON.

I hereby certify that I received the within writ of error on the 27th day of April, 1895, at Tacoma, and personally served the same on Cora E. Nixon, defendant in error, at Tacoma, on the 29th day of April, 1895, by reading the contents of the same to her; the acceptance of service is made by plaintiff's attorneys as above.

Marshal's fees, $4.00.

JAMES C. DRAKE,
U. S. Marshal,
By C. S. BRIDGES, *Deputy.*

UNITED STATES OF AMERICA, *ss:*

To Cora E. Nixon, Greeting:

You are hereby cited and admonished to be and appear at the United States circuit court of appeals for the ninth circuit, to be held at the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Washington, western division, wherein The Provident Savings Life Assurance Society is plaintiff in error, and you
159 are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not

be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of April, [SEAL.] A. D. 1895, and of the Independence of the United States the one hundred and nineteenth.

C. H. HANFORD,
U. S. District Judge, Presiding in said Circuit Court.

Attest: A. REEVES AYRES, *Clerk.*

We hereby, this 27th day of April, 1895, accept due personal service of this within citation on behalf of Cora E. Nixon, defendant in error.

CARROLL, WARBURTON, PALMER & RELFE,
Attorneys for Cora E. Nixon.

U. S. MARSHAL'S OFFICE,
Western Division, District of Washington.

I hereby certify that I received the within writ of citation on the 27th day of April, 1895, at Tacoma, and personally served the same on Cora E. Nixon, defendant in error, at Tacoma, on the 29th day of April, 1895, by reading the contents of the same to her;
160 the acceptance of service is made by plaintiff's attorneys as above.

JAMES C. DRAKE,
U. S. Marshal,
By C. S. BRIDGES, *Deputy.*

Marshal's fees, $4.24.

(Endorsed:) No. 233. U. S. circuit court of appeals, ninth circuit. Provident Savings Life Assurance Society, plaintiff in error, *vs.* Cora E. Nixon, defendant in error. Transcript of record. In error to the circuit court of the United States for the district of Washington, western division. Filed May 4, 1895. F. D. Monckton, clerk.

161 United States Circuit Court of Appeals for the Ninth Circuit.

PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Plaintiff in Error,
vs.
CORA E. NIXON.
No. 233.

In error to the United States circuit court, district of Washington, western division.

Walker & Fitch for plaintiff in error and Stanton Warburton for defendant in error.

Before McKenna and Gilbert, circuit judges, and Hawley, district judge.

This is an action by defendant in error on two policies of insurance issued by plaintiff in error to the husband of defendant in error and of which she was the beneficiary. They were respectively for $5,000.00 and $15,000.00, and the premiums on the former were payable quarterly on the 12th days of March, June, and September and December. That which fell due on the 12th of September, 1890, was not paid when due nor has it ever been paid. The premiums on the $15,000.00 policy were payable annually on the 11th day of October, and that which fell due October, 1890, was not paid.

The husband of defendant in error died on the 16th of April, 1891.

The defense is a forfeiture for non-payment of premiums. This defense depends upon the provisions of the New York statute and the acts of the plaintiff in error under it.

162 The statute is as follows: "The people of the State of New York, represented in senate and assembly, do enact as follows:

"SECTION 1. Section one of chapter three hundred and forty-one of the laws of eighteen hundred and seventy-six, entitled 'An act regulating the forfeiture of life insurance policies,' is hereby amended so as to read as follows:

"SEC. 1. No life insurance company doing business in the State of New York shall have power to declare forfeited or lapsed any policy hereafter issued or renewed by reason of non-payment of any annual premium or interest, or any portion thereof, except as hereinafter provided. Whenever any premium or interest due upon any such policy shall remain unpaid when due, a written or printed notice stating the amount of such premium or interest due on such policy, the place where said premium or interest should be paid, and the person to whom the same is payable, shall be duly addressed and mailed to the person whose life is assured, or the assignee of the policy, if notice of the assignment has been given to the company, at his or her last known post-office address, postage paid by the company, or by an agent of such company or person appointed by it to collect such premium. Such notice shall further

state that unless the said premium or interest then due shall be paid to the company or to a duly appointed agent or other person authorized to collect such premium within thirty days after the mailing of such notice, the said policy and all payments thereon will become forfeited and void. In case the payment demanded by such notice shall be made within the thirty days limited therefor, the same shall be taken to be in full compliance with the
163 requirements of the policy in respect to the payment of said premium or interest, anything therein contained to the contrary notwithstanding; but no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice. Provided, however, that a notice stating when the premium will fall due, and that if not paid the policy and all payments thereon will become forfeited and void, served in the manner hereinbefore provided, at least thirty and not more than sixty days prior to the day when the premium is payable, shall have the same effect as the service of the notice hereinbefore provided for.

"SEC. 2. The affidavit of any one authorized by section one to mail such notice, that the same was duly addressed to the person whose life is assured in the policy, or to the assignee of the policy, if notice of the assignment has been given to the company, in pursuance of said section, shall be presumptive evidence of such notice having been given."

To prove the sending of notice under these statutes, the plaintiff in error tendered certain evidence which was excluded by the court below, and this ruling is assigned as error.

There are other assignments of error, but they are dependent upon this ruling.

The bill of exceptions shows that one William E. Stevens, whose deposition was taken in New York, testified on behalf of defendant as follows:

That his age was 51; that he was New York secretary of the Provident Savings Life Assurance Society of New York and had been such since 1870.

"Q. 3. What officer or employee had charge of the mailing
164 of notices to the policy-holders of said society in the months of August and September, 1890, of the amount of quarterly payments or other premiums falling due upon its policies?

"A. 3. In August, 1890, Harry H. Meeder, a clerk in the employ of the society; in September, 1890, E. Seward Prosser, another clerk of the society.

"Q. 4. What officer of the Provident Savings Life Assurance Society has since the 12th day of June, 1886, had charge of the records of the premiums falling due upon policies issued by said society and the payment thereof?

"A. 4. I have, and since the date named have had such charge, but the actual work upon these records is done by clerks under my supervision."

After stating when premiums were due and what premiums had been paid, and that of September, 1894, had not been, he was asked:

"Q. 11. Were notices of premiums falling due upon said policy sent to Thomas L. Nixon by the secretary? If so, attach to your answer hereto true copies of the notices so sent of premiums falling due June 12, 1890, and September 12th, 1890, and give the dates when the same were mailed, if sent by mail.

"A. 11. Yes; and true copies of the notices referred to *and* hereto attached and marked Exhibits 'D' and 'E.' They were mailed respectively on May 9th, 1890, and August 4th, 1890.

"Whereupon counsel for the said plaintiff then and there objected to the answer last above given on the ground that it had already been shown by the deposition that the said William E. Stevens was not the party who mailed the said notices, and consequently was incompetent to testify.

165 "Whereupon his honor, the said judge, sustained the objection upon the ground that the answer did not state facts within the personal knowledge of the deponent.

"Whereupon counsel for the defendant excepted to the ruling of his honor, the said judge, and the said exception was by his honor, the said judge, allowed."

And, again, after stating that only one premium was paid on policy No. 32025 (that for $15,000) he was asked:

"Q. 15. Were the notices of premiums falling due upon said policy No. 32025 sent to Thomas L. Nixon by the society? If so, attach to your answer hereto a true copy of each notice so sent and give the date when the same was mailed, if sent by mail.

"A. 15. Yes. The notice was mailed September 9th, 1890. Copies of two forms of notices are attached hereto and marked 'Exhibit F and F 2.' I cannot say positively which form was used.

"Whereupon counsel for the plaintiff then and there objected to the answer last above given on the ground that it had already been shown by the deposition that the said William E. Stevens was not the party who mailed the said notices, and consequently was incompetent to testify.

"Whereupon his honor, the said judge, sustained the objection upon the ground that the answer did not state facts within the personal knowledge of the deponent.

"Whereupon counsel for the defendant excepted to the ruling of the said judge, and said exception was by his honor, the said judge, allowed."

Henry H. Meeder testified he was a clerk of plaintiff in
166 error, and that it was his duty to mail to policy-holders notices of payment of premiums about to become due upon their policies from July 28, 1890, to August 8, 1890.

"Q. 4. Did you at any time mail to Thomas L. Nixon, of Tacoma, Washington, notice of the premium falling due on September 12, 1890, upon his policy No. 18647? If so, attach to your answer hereto a true copy of such notice, including the address thereon, and state when and where you mailed the same.

"A. 4. Yes; I attach an exact copy of that notice hereto, marked 'Exhibit 1.' I personally deposited in the general post-office of New York city on the 4th day of August, 1890, the original notice of

which this is a copy, addressed to Thomas L. Nixon, Tacoma, Washington, that being his last known post-office address. The mailing of such notice was at that time a part of my duty as clerk.

"And thereupon the said defendant, further to prove and maintain the said cause on its part, offered in evidence the copy of the notice of premium falling due September 12, 1890, to which reference was made in the answer of the said Henry H. Meeder to the fourth interrogatory above set forth; which said copy of said notice is in the words and figures following, to wit:

"Office of the Provident Savings Life Assurance Society of N. Y.
Home office, No. 120 Broadway.

"NEW YORK, *Aug. 4th*, 1890.

"Take notice that a premium of $15.85 required to renew policy No. 18647 in this society will, if such policy be in force on that day, but not otherwise, become due and payable to the secretary
167 of the society at its office, No. 120 Broadway, in the city of New York, on the 12th day of September, 1890, and if not paid on or before said date the policy and all payments made thereon will become forfeited and void; but this notice is not intended to vitiate any right to paid-up or extended insurance provided for in the policy contract. All premiums are due at the office of the society in the city of New York, but for the convenience of policy-holders payments may be made on or before due dates to an authorized agent having in his possession the society's receipt therefor, signed by the president or secretary.

"Should you change your post-office address, please notify the secretary of the society in writing.

"WM. E. STEVENS, *Secretary*.

"N. B.—Agents are forbidden to receive overdue premiums, except within thirty days of the due dates, and then only upon receipt of a certificate of good health.

"Form 248.

"Whereupon counsel for said plaintiff then and there objected to the introduction of the said copy of the said notice on the ground that it was incompetent, irrelevant, and immaterial; that there was nothing in the deposition to show that any postage was prepaid on the said notice; that it was not the evidence that the statute expressly states shall be the evidence of the mailing of the notice, and for the further reason that it did not affirmatively appear that the notice was mailed to the last known post-office address of the said Thomas L. Nixon, as it appeared on the books of the company.

"Whereupon his honor, the said judge, sustained the objection."

168 E. Seward Prosser, a witness whose deposition was taken on behalf of plaintiff in error, testified that he was an insurance clerk in the employ of plaintiff in error; that it was a part

of his duty to mail to policy-holders notices of payments of premiums about to become due on policies from October 30, 1889, to October 26, 1892, except when absent on vacation or sickness.

In answer to a question identical to that put to Meeder he answered: "A. 4. Yes; on the 9th day of September, 1890, I deposited in the general post-office in New York city a notice addressed to Thomas L. Nixon, Tacoma, Washington. Said notice stated that a premium of $258.00, required to renew policy No. 32025, would become due and payable to the secretary of the society at its office, No. 120 Broadway, in the city of New York, on the 11th day of October, 1890, and that if said premium was not paid on or before said date said policy would thereupon become forfeited and void. A slight change was made at about this time in the blank form used in these notices, and I cannot swear which was used, but according to my best knowledge and belief the form used was one of the two forms hereto annexed and marked 'Exhibits 1 and 2' respectively."

The part of the answer descriptive of the notice was struck out on motion of defendant in error, and to meet the ruling of the court two forms of notices used were introduced in evidence.

169 After stating the case as above, McKENNA, circuit judge, delivered the opinion of the court:

The statute is explicit as to when and where and how notice shall be sent to the assured that a premium is due. The provision and language is that it "shall be duly addressed and mailed to the person whose life is assured * * * at his or her last known post-office address, postage paid by the company or by an agent of such company or person appointed by it to collect such premium."

It is contended by plaintiff that his proof shows a compliance with the statute. It does not explicitly, but it is claimed as an inference from the word "mailed," and that this word implies prepayment of postage is said to be supported by the following cases:

Pier *vs.* Heinrichshoffen, 67 Mo., 163; Bussard *vs.* Levering, 6 Wheaton, 102; Lindenberger *vs.* Beall, 6 Wheat., 104; Sanderson's Administrator *vs.* Reinstadler, 31 Mo., 483; Renshaw *vs.* Triplett, 23 Mo., 213, at page 220; Rosenthal *vs.* Walker, 111 U. S., 185; Shutz *vs.* Jordan, 141 U. S., 213; National Butchers' & Drovers' Bank *vs.* De Groot, 43 N. Y. (S. C.), 341.

But two of these are in point; the others only hold that notice in the instance mentioned by them could be given by mail. The fact or necessity of prepayment of postage was not raised. Both appear to have been taken for granted. Indeed, in one case (Rosenthal *vs.* Walker) it appeared that postage was prepaid. (Page 197.)

In Pier *vs.* Henrichshoffen a notary public made affidavit that he "mailed" certain notices of protest.

170 The testimony was objected to on the ground that he did not state that the postage on said notice was prepaid. The lower court sustained the objection and excluded the evidence. The appellate court reversed the ruling.

The language of the appellate court is as follows:

"Objections are also made to the notice which was given by the notary. The certificates of protest are as follows:

'Due notices of the foregoing presentment, demand, refusal, and protest were put in the post-office at St. Paul, as aforesaid, and directed as follows: Notice for Katharina Ambs, directed St. Louis, Mo.; notice for W. and R. Heinrichshoffen, directed St. Louis, Mo.' And the notary testified: 'I personally mailed such notice in the post-office on the 15th day of July, A. D. 1861.' The objection is that he did not say that he had prepaid the postage, and the court instructed the jury that this was necessary. This objection is rather hypercritical. The word mailed as applied to a letter means that the letter was properly prepared for transmission by the servants of the postal department and that it was put in the custody of the officer charged with the duty of forwarding the mail. Indeed the words 'put into the post-office' as used by the notary have a technical significance which is well defined, and they are commonly employed to designate the duty of the holder in giving notice. Since the enactment of the laws requiring all mail matter to be prepaid these words have been used by this court in the sense of mailed. * * * It sufficiently appears in the present case that the notice was properly directed. The evident and only meaning of the notary's certificate is that the notice was mailed to the defendants at St. Louis, Mo. The judgment will be reversed and the
171 cause remanded."

In The National Butchers' and Drovers' Bank *vs.* De Groot, 43 N. Y. (S. C.), 341, the same question was presented on the same state of facts as existed in the case of Pier *vs.* Heinrichshoffen. The language of the court is as follows:

"In corroboration and explanation of the memoranda of the notary it was proved at the trial and without objection that the notices of protest were put in envelopes and directed to the defendant at his place of business, No. 142 Fulton street, New York city, and delivered thus enclosed and directed by the notary, whose custom it was to mail such notices in the general post-office of the city of New York.

"At the trial the defendant did not testify that he failed to receive the notices of protest of the notes.

"The defendant objected that there was no evidence that the notices were sealed up and postage prepaid and when and where they were put in the post-office. The statute (3 R. S., 5th ed., p. 71, S. 29) does not require the notices to be sealed up, and the memoranda of the notary in his official register sufficiently designate when and where they were mailed.

"A question was raised on the argument as to the meaning of the term 'mailed.' The word is usually employed to designate the placing of letters or parcels in a post-office, to be delivered under the public authority. The delivery of this class of mail matter is prohibited unless the postage thereon is prepaid (S. 3896, S. 3900, U. S. Stat. at L.). When the word 'mailed' appears as a note or memorandum in the official register of a deceased notary it is con-

sistent with reason and the actual meaning of the term to
172 presume that it describes what that act in its common and ordinary performance calls for, and more especially is this the case when there is other proof corroborating and explaining entries."

We should be disposed to follow these decisions if the witnesses of plaintiff in error had testified that they had mailed the notices without adding explanations, certainly to the extent of holding that the testimony should have been submitted to the jury.

It is true that William E. Stevens, secretary of the company, testifies that the notices were mailed, but this was hearsay and properly excluded. The other two witnesses, Meeder and Prosser, testify as to the point involved very much alike, and, while each, in reply to the question if he had mailed the notices, answered, Yes, each enumerated what he did, and did not include in the enumeration payment of postage. To allow the testimony to be proof of the requirements of the statute would be to relax it too much and afford opportunity for its evasion. See Haskins *vs.* Ky. Grangers' Mutual Benefit Society, 7 Ky. Law Reporter, 371.

The judgment of the circuit court is therefore affirmed.

(Endorsed:) Opinion. Filed Feb. 4, 1896. F. D. Monckton, clerk.

173 United States Circuit Court of Appeals for the Ninth Circuit.

PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Plaintiff in Error,
vs.
CORA E. NIXON. } No. 233.

In error to the circuit court of the United States for the district of Washington, western division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Washington, western division, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

174 United States Circuit Court of Appeals for the Ninth Circuit.

PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, Plaintiff in Error,
vs.
CORA E. NIXON. } No. 233.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing one

hundred and seventy-three (173) pages, numbered from one (1) to one hundred and seventy-three (173), inclusive, to be a full, true, and correct copy of the printed transcript of record in the above-entitled cause and of the opinion and decree filed and entered in our said United States circuit court of appeals, and that the same together constitute the entire record therein.

Attest my hand and the seal of said United States circuit court of appeals, at San Francisco, this 21st day of February, A. D. 1896.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 933

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK,

Plaintiff in Error,

against

CORA E. NIXON,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR

(IN SUPPORT OF PETITION FOR CERTIORARI).

EDMUND WETMORE,
EDWIN B. SMITH,
Of Counsel for Petitioner.

Petition bound next after this.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No.

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, plaintiff in error,

AGAINST

CORA E. NIXON, defendant in error.

BRIEF FOR PLAINTIFF IN ERROR, (in support of petition for certiorari)

Statement.

This case is one not merely affecting this petitioner and the innumerable policies issued by the large life-insurance companies chartered in New-York, but every policy of the many, many thousands issued in that State by similar companies, incorporated elsewhere, but "doing business" in New-York.

As set forth in our petition this suit was brought upon two policies of insurance, one for $5000 and the other for $15000, upon the life of Thomas Lea Nixon,

the premiums upon which (it is proved and undenied) had not been paid for a long time before his death, which occurred April 16, 1891. (Rec. 60, fol. 107; 63, fols. 109 and 111.)

The smaller policy, No. 18647 issued June 12, 1886, for a term of three months; but the Society agreed to extend and renew it *quarterly* thereafter, *provided* the requisite quarterly payments for the purpose were made upon the twelfth days of each September, December, March and June succeeding its issue *(Id.* 2, 3; fols. 2 to 4.*)*

The last payment of premium was made June 12, 1890 *(Id.* 60, fol. 107.*)* None was paid in the succeeding September, December or March.

Only the premium of $258 necessary to put in force the larger policy (No. 32025) issued October 11, 1889, was ever paid thereon. That sum ($258) falling due thereon October 11, 1890, was never paid nor tendered. (Rec. 62, fols. 109, 111.)

There was positive testimony offered (but rejected, as hereinafter mentioned) that the notice prescribed by the New York laws was "mailed" to Mr. Nixon, in respect to *both* policies. *(Id.* 61, fol. 108; 62, fol. 110; 66, fol. 117, and 69, fol. 123.*)*

William E. Stevens, the Society's Secretary, was asked (question 11) if such notice was sent as to policy No. 18647 for $5000, and to give dates of mailing, if mailed. He answered, "Yes," and that copies of those for premiums due June 12 and September 12, 1890, on policy 18647, were attached to his deposition; adding, "*They were mailed*, respectively, on May 9, 1890, and August 4, 1890." This eleventh answer was objected to, on the ground that the third answer of the deposition showed "that the said William E. Stevens was not the party who mailed the said notices; and, CONSEQUENTLY, *was incompetent to testify*":—the counsel's idea evidently being that nobody but the mailing-clerk mentioned in the N. Y. statute could be allowed to prove that the notice was mailed! The court "sustained *the* objection,

on the ground that the answer did not state facts within the personal knowledge of the deponent". The defendant excepted. We claim it was neither incompetent, nor impossible, for other persons than the mailing-clerk to *know* and to *state* that the notices were actually mailed; nor was there a word (beyond the mere fact that he was not such clerk) to indicate that Mr. Stevens did not testify of such personal knowledge. (Rec. 59, fol. 105, ans. 3; 61, fols. 108 and 109.)

The same course was pursued with reference to the notice of premium falling due Oct. 11, 1890, upon the large policy, No. 32025, for $15,000. Being asked if such notice was sent, and when mailed, Mr. Stevens replied (Ans. 15); "Yes. The notice was *mailed* Sept. 9, 1890."

Precisely the same objection was made, the same ruling (upon the same ground) and exception taken thereto, as in respect to the smaller policy—as above shown. (Rec. 62, fols. 109 and 110.)

Upon the same ground (only) the notices attached to Mr. Stevens' deposition were excluded. *(Id.* 64, fol. 114, and 66, fol. 117.*)* Exceptions again taken. *(Ibid.)*

The deposition of the Society's mailing-clerk, Henry H. Meeder, was introduced. He was asked, Q. 4;—"Did you at any time *mail* to Thomas L. Nixon of Tacoma, Washn., notice of the premium falling due Sept. 12, 1890, upon his policy No. 18647?" and to attach a copy. (Rec. 66, fols. 117, 118.)

His answer was;—

"*Yes.* I attach an exact copy of that notice hereto, marked Exhibit 1. I personally deposited in the general post-office of New York City on the 4th day of August, 1890, the original of the notice of which this is a copy, addressed to Thomas L. Nixon, Tacoma, Washington; that being his last-known post-office address. The mailing of that notice was, at that time, part of my duty as mailing-clerk." *(Ibid.)*

The attached notice was then offered in evidence; objected to as "incompetent, irrelevant and immaterial;

that there was nothing to show that any postage was prepaid; *that it was not* THE *evidence that the statute expressly states shall be the evidence of the mailing* of the notice," &c. (Rec. 67, fol. 119.) The said objection was sustained. The judge, in sustaining it, assigned his reason, substantially, that there was no proof of the prepayment of the postage. *(Id.* fol. 20.*)* He also assigned another ground, arising out of an overpayment in June of $1.^{25}$, which may be touched upon in the argumentative part of the brief; but it is desired to confine this statement to the general questions of the necessity for notice, and the effect of proof of "mailing"—which affect general, manifold interests. Exception was duly taken to this ruling. *(Id.* 68, fol. 122.*)*

As to the notice upon the large policy, No. 32025, E. Seward Prosser deposed that he was the Society's mailing-clerk from Oct. 30, 1889, to Oct 26, 1892. He was asked;—

Q. 4. "Did you, at any time, mail to Thomas L. Nixon, of Tacoma, Washington, notice of a premium falling due Oct. 11, 1890 upon his policy No. 32025?" and to attach a copy. His answer was;—

A. 4. "*Yes.* On the 7th of September, 1890, I deposited in the general post-office in New York city a notice addressed to Thomas L. Nixon, Tacoma, Washington."

He then gives its purport, and attaches copy. *(Id.* 69, fols. 122–3.*)*

This statement of its purport was struck out as not the best evidence. *(Id.* fol. 24.*)*

The exhibited and attached copies were then objected to, and excluded, upon the same grounds as those stated with regard to the other policy; "whereupon His Honor, the said judge, sustained the objection *upon the ground that it was not shown that the postage was prepaid on the notice* that was sent." The defendant excepted. *(Id.* 71, fols. 126–7.*)*

The Court directed a verdict, in so many words, for the plaintiff upon the smaller policy; and, as to the

other, told the jury that, whereas the defendant was bound to establish its defence of notice by a preponderance of proof, it had "entirely failed to prove that a written or printed notice was *mailed and the postage paid*," etc.; "no legal evidence of the sending of such notice has been introduced." The defendant excepted. (*Id.* 72, fol. 129.)

A verdict of $24,276.67 was rendered against us, and judgment entered thereon. (*Id.* pp. 54 and 57.)

Errors were properly assigned to each of the aforementioned rulings. (Rec. 78 to 84.)

A writ of error was allowed and citation served, to take the case to the U. S. Circuit Court of Appeals for the Ninth Circuit. (*Id.* 87 to 89.)

That Circuit Court of Appeals affirmed the judgment against us below. (Rec. 96, fol. 173.)

The opinion of the appellate court recites the New York statute. (*Id.* 90, 91, fols. 162, 163.)

It bases its affirmance of the judgment entirely upon the ground that this statute requires proof of payment of postage, in addition to that of 'mailing'; and that there was *no proof of the prepayment of postage.* (*Id.* 94, fol. 169; 96, fol. 172.)

The second section of the statute, which prescribes what shall be presumptive evidence of notice given contains no such requirement. It reads;—

Sec. 2. The affidavit of any one authorized by section one to mail such notice, *that the same was duly addressed* to the person whose life is assured in the policy (or to the assignee of the policy, if notice of the assignment has been given to the company) in pursuance of said section, shall be presumptive evidence of such notice having been given.

POINTS.

We contend for these propositions.

I. That it would not be competent for the state of New York to prescribe rules regulating the making, or discharge, of contracts outside its jurisdiction.

II. That the statute was only intended to affect companies, persons and contracts within its jurisdiction; that it means to regulate business done, and rights asserted, within that state; of which the present is not an instance.

III: That it does not, by its terms, apply to a policy like those in suit, upon which there is no reserve—no sum or interest which can be a subject of forfeiture.

IV. That, under that statute, and in the ordinary transactions outside of it, where notice by post is an element, proof of "mailing" implies the prepayment of postage—as has been declared by the highest courts of several states; by the Superior Court of New-York; and, virtually assumed by the N. Y. Court of Appeals.

V. That proof by the person actually mailing the letter of notice is not the only mode of proving the fact, and does not exclude evidence of the same fact by other witnesses.

I.

Statute has no extra-territorial effect.

It is elementary, that the legislation of every country is territorial. "It is not easy to conceive a power

to execute a municipal law, or to enforce obedience to that law, without the circle in which that law operates."

Rose v. Himely, 4 Cranch, 279.
Farnum v. Blackstone, 1 Sumn. 62 bot.

If this is true of national legislation, it applies with greater force to the statutes of a state as touching business done in another state. Life-insurance does not come within "the commerce clause" of the constitution; but it is a subject upon which every state has its own policy, with regard to its own citizens, which it cannot force upon other states, or their citizens, through their own courts, or the federal courts therein, or otherwise.

Bond v. Jay, 7 Cranch, 353.
Rosseter v. Cahlman, 8 Exch. 361.
Beach v. Bay State, 30 Barb. 434, 439, 440.
McCarthy v. Chicago, 18 Kans. 48.
Hover v. Pa. Co. 25 Oh. St. 667.
Hill v. Wright, 129 Mass. 296.

"The governing principle is that *all* legislation is *prima facie* territorial."

Ex p. Blain, 12 Ch. D. 528.

"The statutes of this realm have no power, are of no force, beyond the dominion of her Majesty; *not even to bind the subjects of this realm*, unless *they* are *expressly* mentioned," etc.

Jefferys v. Boosey, 4 Ho. Lds. 939.
Henry v. Stuart, 14 Phila. 110.
Merrill v. Boston, 63 N. H. 360.
Davis v. N. Y., 143 Mass. 304.

As noted under the next division, *the Supreme Court of the State of Washington has held this notice-law inapplicable, per se,* to contracts of insurance effected in that State with a New-York company.

Griesemer v. Mut. L. I. Co. 10 Washn. 202.

II.

No intention this Statute should operate extra-territorially.

The statute addresses itself to *all* companies "doing business in the State of New York;" not merely to those there incorporated.

It is not an amendment of its own charters, but a regulation of affairs; a protection of its citizens from loss by reason of business done within its limits; or a declaration of a public policy. It would not accomplish its purpose, if the Mutual Benefit of New-Jersey, the Connecticut Mutual, the Massachusetts Mutual, the National of Vermont, the Northwestern of Wisconsin, and numberless others which have offices in New-York, were exempt from its operation by reason of being chartered by other states. As matter of fact, none of these companies claim any such exemption, but send out their notices to all their New York policy-holders. The statute acts upon the Provident Savings exactly as it does upon these others, and no otherwise. It relates only to 'business done' within the state; to "any policy hereafter issued or renewed" therein by any company, to any of its residents. (Rec. 90, fol. 162.) It protects, and assumes to protect, only those who are under the ægis of its laws and no others.

Mr. Nixon, owing New York no allegiance, nor obedience, being neither her citizen nor a stranger within her gates, could not invoke her protection, as to business done at his own home, in Washington, as this was.

The very first paragraph of the amended complaint (Rec. 18, fol. 31) avers that the defendant "was doing business at Tacoma, State of Washington;" and this our answer admits. (*Id.* 29, fol. 51).

The second paragraph of this complaint alleges that, on the twelfth day of June, 1886, upon a stated consid-

eration, and by a certain written contract, the defendant "did, then and *there*, insure the life of said Thomas Lea Nixon;" the making of which contract our answer admits. *(Id.* 18, fols. 31 and 32; 29, fol. 51.*)* There is where he paid his premiums, until which payment the policies were, by their terms, ineffective. *(Id.* 24, fol. 42; pp. 60 and 62.*)* This first policy was kept alive by payments made in Tacoma. *(Ibid.)* It was there "renewed." There is nothing about it to bring it under New York laws.

To such a policy, though issued by a New York corporation, the Supreme Court of Washington has declared the New York law of notice to have no application, as already noted.

Griesemer v. Mut. Life, 10 Wash. 202.

If the present decision stands unreviewed, we shall have different constructions of such policies, in that State; according as the action thereon is brought to trial in the state, or in the federal, court!

Though the larger policy refers to the laws of New York as a rule of construction, this does not affect the result, when that law is thus correctly construed. If, as cannot be doubted, this law as to notice is to be restricted to policies actually taking effect in New York, then saying that the law of that state is to govern, does not intend that an *inapplicable* New York law is to control its meaning.

III.

Statute inapplicable to these policies.

The policies upon which this suit was brought are contracts of a peculiar character, pertaining exclusively

to the exceptional nature of the business done by the defendant.

The smaller policy was for three months only, with a privilege of renewal, from time to time, for other quarter-years.

The large policy was for a year, with the right of annual renewal. 135 N. Y. 553, bottom.

Each stipulated for a new contract of assurance, if a new and increased premium were seasonably paid therefor. Such payment was a condition precedent to the making of *a new contract of assurance*.

There are two different *classes* of life assurance; one, the common (and in 1876–7 substantially, if not absolutely, the only) form, of a regular, fixed annual, or quarterly premium, payable through life; and the other, insurance for a definite term of one or more months, quarters or years.

Bacon on Ins. § 18.
Bliss on L. Ins. 5, § 4.

It was to the first, common class, being practically then the only form of life-assurance known in this country, that the amendatory act of 1877 was intended to apply; and it was mischief necessarily incident to that system, and *which cannot arise under policies like the one in suit*, it was intended to remedy.

The Act of 1877, c. 321, did not seek to enjoin or favor any one method of life insurance, nor to injure or prejudice any method; nor to dictate any form or terms of contract beyond this—that no company should assume, by stipulation or otherwise, to *declare a forfeiture* of any policy, by reason of *non-payment* of a *due premium*, without first giving the prescribed notice.

If, by any method of insurance and under a particular form of policy, no premium ever became *due*, so as to be a debt to the company; and the assured had no vested interest in the policy (by reason of premiums paid) to be forfeited; the statute *could* not apply to such cases.

Such is the defendant's method, and such the policy in suit.

We do not care, now and here, to enlarge upon this topic. Three or four years ago, we presented it to the New York Court of Appeals which found it not essential to the determination of the then-pending cause to decide it; but said of it,

"*The question is an interesting one*, and *its solution might not be free from difficulty*, but, inasmuch as the appellant must succeed upon the second ground advanced, we do not think it necessary to pass upon the question."

McDougall v. Provident, 135 N. Y. 555.

All we now desire to show this Court is, that the question *is* one of interest, of difficulty, and unsettled. It is, then, one worthy of being here considered upon *certiorari*.

IV.

"Mailed" implies post-paid.

Primarily, 'mail' means, with its contents, the bag, or pouch, which is a receptacle for those letters and packages *(and no other)* which may lawfully be carried from the place of their deposit to that of their destination; but it has been extended by long and universal usage, to include the vehicle by means of which the transportation of such letters and packages is effected.

U. S. v. Wilson, Baldw. 105.

Wynen v. Schappert, 6 Daly, 560, where the learned Chief-Justice says it is "the carriage and delivery of letters by public authority." This is also the definition of Webster, Internat. Dict. *h. t.*; and of the Century Dictionary.

Webster's International Dictionary (and the Century's definition is, substantially, the same) defines to "mail" thus;—"To deliver into the custody of the post-office officials, or place in a government letter-box, *for transmission by mail.*"

To cite lexicons is superfluous. Everybody understands that when one person says, or swears, that he "mailed" a letter to another, that he means he put it into a post-office, or carrier's, box in such form as that it was *entitled* to be thence taken to its destination.

According to the foregoing definitions, and to the common understanding, when a witness says he 'mailed' a notice, *the jury would have been justified in finding that language to mean that he "delivered it into the custody of the post-office officials for its transmission by mail": i. e. in such condition that it lawfully could be transmitted by mail;* and *it was palpable error to withdraw this testimony,* and the notices to which it related, *from the jury.*

Such is the meaning attached by the Courts to the word "mailed." By "putting the same into the post-office" proof of *service* of notice is made.

Ketchum v. Barber, 4 Hill, 236 bot.

As we have seen, 'mailed' means the same thing, and has been so construed.

Brooks v. Day, 11 Iowa, 46.
Lloyd v. McGaw, 3 Pa. St. 474.
Pier v. Heinrichshoffen, 67 Mo. 163.
Nat. Bk. v. De Groot, 43 N. Y. Supr. 341.
Austin v. Holland, 69 N. Y. 576 bottom.
Huntley v. Whittier, 105 Mass. 391.
Walworth v. Seaver, 30 Vt. 728.
6 Wheaton, 102 and 104.
Nicholls v. Webb, 8 Wh. 336.
Rosenthal v. Walker, 111 U. S. 193 and cases.
Schutz v. Jordan, 141 *Id.* 219, 220.

Most of the above citations, including the last two, and some others,—but not 69 N. Y.—were called to the

attention of the appellate Court in Washington (Rec. 94, fol. 169) but were brushed aside as not pertinent, except those in 67 Mo. and in 43 New-York Superior.

While in these others the question whether 'mailed' implied 'prepaid' was not distinctly put in issue, it was assumed in every one of them that such is its meaning. Each opinion is clearly based upon this assumption.

If such is the ordinary meaning, the Courts, trial and appellate, wrongly decided the point against us. *If we were entitled to have the jury say what the witnesses' language meant*, it was equally error for the Court to construe it, and rule against us upon that construction.

The words upon which the Circuit Justice laid such stress were entirely disregarded by the N. Y. Court of Appeals, in considering this matter of notice, in McDougall v. Provident, 135 New-York, 554. Here, again, it treated the word 'mailed' as the other courts have done in our cited cases; and as it did in 69 N. Y. 576.

If, by any possibility the effect of the witnesses' testimony could be treated as matter of law; as establishing, or failing to establish, compliance with chapter 341 of the New York laws of 1876, or chapter 321 of the laws of 1877;—then it was error not to construe the word 'mailed' as the New-York courts have construed it. If the policy carries the New York laws to Washington, it takes the New-York meaning of the language with it.

If, on the other hand, the meaning and implication of the testimony of these witnesses was a question of fact (as it seems to be) then it was error to take it from the jury; and upon the Court's construction of what was meant by the witnesses' use of the word 'mailed,' to reject and exclude our proof that due notice was given, with respect to each policy.

V.

Other errors in construing New-York Laws.

Chapter 341, §1, Laws of 1876, forbade the forfeiture of any policy unless written notice, of the indicated tenor, was "addressed and mailed *by the company* issuing such policy to the assured, postage paid" not less than thirty days next before such payment becomes due, etc.

§2. The affidavit of *any* officer, clerk or agent of the company that the notice to the assured provided for in section one has been duly *addressed and mailed* BY THE COMPANY [*not, by the affiant.* E. B. S.] issuing such policy to the assured shall be presumptive evidence of *such* notice having been *duly* given."

The amendatory chapter, 321, of the act of 1877, is reproduced in the record, in full, at pages 90 and 91. It will be observed to be only a substitute for "section *one* of chap. 341, of the laws of 1876;" leaving the *second* section, above-given, untouched. Express reference to the first section, only, excludes the idea of a repeal of the second by implication or substitution. *Expressio unius*, etc.

The change in the law was that the notice might be given *after* non-payment of premium at its due date or (under the proviso) the same length of time previously to its becoming payable.

The notice "shall be addressed and mailed . . . [1] *by the company* [2] or by an agent of such company [3] or person appointed by it to collect such premium."

Every large insurance company, besides its home office, has general agents in several large cities, in different parts of the Union, and there are collection agencies all over the land. The notice may be sent out by either of these three.

The second section of the act of 1877—existing concurrently with the second section of the act of 1876—says that

"The affidavit of any one authorized by section one to mail such notice *that the same was duly addressed to the person whose life is assured* in the policy . . . shall be presumptive evidence of such notice having been given." (Rec. 91, fol. 163.)

Section one, act of 1877, clearly states that the notice may be sent out "by the company," as distinguished from those known as its "agents" or collectors. "The affidavit of any one authorized to mail such notice" [not, actually and manually, mailing] to the prescribed fact shall be presumptive evidence of notice given.

William E. Stevens, Secretary, was "*authorized* by section one," act of 1877, "to mail such notice;" he was an officer empowered by the second section of ch. 341, act of 1876, to make affidavit that the notice "has been duly addressed and mailed *by the company*," etc.; hence, he was competent to so swear, and his testimony should not have been rejected.

The objection to the admission of Mr. Stevens' testimony was based *wholly* upon the theory that because he "was not the party who mailed the said notices" he was "*consequently* INCOMPETENT to testify." (Rec. 61, fol. 109; and 62, fol. 110.)

The objection will be seen to be personal; to the competency of the witness, irrespective of the nature of his statement. Obviously, the idea of the objector was that only he who actually mailed the notice could prove it, either by affidavit or testimony.

The testimony of Mr. Stevens, in each instance, was excluded by the court upon a ground not suggested as that of the objection; *viz.*, "that the answer did not state facts within the personal knowledge of the deponent." *(Id., ubi sup.)*

Though the court did not state the objection in the same terms that plaintiff's counsel did, it was in effect

the same; since it substantially assumes that, because Mr. Stevens' own hands did not perform the acts of mailing, his eyes and mind could not perceive and know what was done by his subordinates. *There is not a word in his deposition to show that the facts he stated were not "within the personal knowledge of the deponent."* If it merely appear *probable* that they were not (and this is the utmost that can be assumed) that was a matter to be considered by the jury; it did not justify the exclusion of a statement positive in form, and *possibly* true, precisely as stated, to the deponent's own knowledge.

Though the proposition is so untenable that it may now be rejected and derided by plaintiff's counsel, the record clearly shows that their original theory, practically acted upon by the Court, was that only the clerk who manually mailed the notices could testify to the mailing. (See Rec., *ubi sup.*; also pp. 67, fol. 119, and 71, fol. 126, and 93, fol. 167.)

VI.

Erroneous rulings.

There were numerous other errors, highly injurious to the defendant (had not the direction for a verdict swallowed all the rest) committed at the trial. Upon these, it is not proposed to dwell; but to give prominence only to those of general interest and importance; especially to those adopted by the Circuit Court of Appeals as the ground of its affirmance.

For instance, an accidental overpayment of $1.25 upon the expense charges of June 12, 1890, was agreed by the parties to be allowed as a credit upon that due September 12, 1890 (which was never paid); but the trial Court advanced the idea that this arrangement

dislocated the whole terms of the policy, and its stipulations as to the dates of paying premiums! (Rec. 68, fol. 121.)

This error, so palpable, affecting only this policy, and ignored by the Circuit Court of Appeals, will be left upon the bare statement of it.

We will not even state other such errors incidental to the trial.

VII.

Additional Error of U. S. Circuit Court of Appeals.

Had not the errors of which we have hereinbefore complained been ratified by the Circuit Court of Appeals, we should not be here with this petition;—but it added an erroneous proposition of its own, not suggested in the trial court.

After referring to the New-York and Missouri decisions, holding that proof of the 'mailing' of a notice implied prepayment of postage, the Circuit Court of Appeals said;—

"We should be disposed to follow these decisions if the witnesses of plaintiff in error had testified that they had mailed the notices, *without adding explanations; certainly, to the extent of holding that the testimony should have been submitted to the jury.*" *(Rec. 96, top, fol. 172.)*

Then follows that court's adoption of the trial court's assumption, that Secretary Stevens' positive testimony was, necessarily and absolutely, hearsay; instead of being (at the utmost) only hypothetically and probably but hearsay. *(Ibid.)*

Mr. Meeder is asked; "Did you at any time mail" notice? etc.; to attach copy, including the address;

and to state *when* and *where* he mailed it. (Rec. 66, fols. 117, 118, question 4.)

The questions are attached to a commission in Tacoma, to be answered in New-York, without the presence of counsel; but the witness replies to each specification, *singula in singulis*, thus; (1) "Yes." (I did mail it.) (2) "I attach an exact copy of *that* notice." [*i. e.*, *that* which I mailed.] (3) "Addressed," etc. (4) "When? Aug. 4, 1890;" (5) "Where? In the general post-office in New-York city"—[not in a street-box or office mailing-chute.]

The other mailing-clerk does the same. *(Id.* 69, fols. 122-3.*)*

He catagorically answers 'Yes,' without more, to the inquiry whether or not he, at any time, 'mailed' to Mr. Nixon notice of the premium falling due Oct. 11, 1890. *(Ib.)*

Responding to the other divisions of the general question, he answers each *seriatim*.

Thus it will be seen to be inaccurate to say they "added explanations" to their positive statement of mailing: they only responded to separate inquiries, *when* they *mailed*; *where* they *mailed*; *what* they *mailed*; and gave the *address* of the notice *mailed*.

There is absolutely nothing here to qualify the positive averment of 'mailing'—whatever that includes, or whatever a jury would be justified in finding the witnesses to mean by it; and there is absolutely nothing in these replies to further interrogation to require the withdrawal from the jury of testimony, and a cause, which, otherwise, "should have been submitted." *(Ibid.)*

VIII.

Conclusion.

A case more strongly requiring the interposition of this Court can hardly be presented.

A law affecting vast interests, all over the country, has been applied to a policy to which the highest court of the state, in the same district, does not apply it; an effect is given to proof of 'mailing' notices which is liable to affect large commercial interests throughout the country, by the deference shown a federal court, in other circuits, and in state courts; and, above all, the grossest injustice is palpably done by strained constructions of the testimony which every reader of the record must be conscious are false ones.

EDMUND WETMORE,
EDWIN B. SMITH,
Of counsel for petitioner.

C. 3 Burgoyne's Printing Business, 146-150 Centre

2, 1/c)

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 832

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK,
Plaintiff in error,

AGAINST

CORA E. NIXON,
Defendant in error.

Petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:—

The petition of the Provident Savings Life Assurance Society of New York respectfully shows;—

That, on the Fourth day of February, 1896, the United States Circuit Court of Appeals for the Ninth Circuit, decided, adversely to your Petitioner, a cause, of which a transcript is herewith filed, involving questions of general interest and great public importance, affecting not only all contracts of insurance by companies doing business in New York, but also, in the doctrine applied, actions upon protested paper put in suit in a federal court;—which decision ought to be reviewed in this Court.

Petitioner's brief ante

The case, and the questions it presents are these;—

Upon the last day of June, 1894, there was transferred into the Circuit Court of the United States for the District of Washington, Western Division, from the Superior Court of Pierce County, in that State, a suit brought by Cora E. Nixon against this petitioner upon two policies of insurance it had issued upon the life of her husband, Thomas Lea Nixon, in which said Cora was named as beneficiary; one (No. 10,467) for Five thousand dollars ($5,000) dated June 12, 1886, and the other (No. 32,025) for Fifteen thousand dollars ($15,000) dated October 11, 1888.

The payments necessary to renew and extend the first mentioned policy had to be made upon the twelfth days of every March, June, September and December. To renew and extend for another year the second-named policy, its premium had to be paid upon the eleventh day of October, annually. Omission to pay the prescribed amounts upon their respective due-dates terminated the policy in regard to which such failure occurred. These premiums were not "level" *i. e.*, uniform—as in the more common form of policy, but increased with every additional year of the insured life; so that each sufficed only for the risk of the term so paid for, and left nothing over at its expiry, to continue the insurance. As matter of fact (though not of record) the New York Insurance Department require no reserve to be maintained in respect of such policies—because they furnish none. That there is no such reserve appears upon inspection of the policies; hence, though the policy may be allowed to 'lapse' by non-payment, it is inaccurate (though not unusual) to speak of it as 'forfeited' from this cause.

Thomas Lea Nixon died April 16, 1891.

The last payment upon account of the first policy (No. 10,467—for $5000) was made June 12, 1890. None made upon the 12th of the succeeding September, or December, or March.

The premium paid to obtain policy ≠32,025 for $15,000 October 11, 1889, was the only one ever paid upon this policy. No premium was paid October 11, 1890, nor in the six months intervening after that before Mr. Nixon's death.

Upon the face of each policy-contract, and according to their terms, as the parties made terms for themselves, these contracts have been fully executed and expired.

The lapse or expiration of each policy, by reason of Mr. Nixon's failure to pay the sums necessary to renew and extend them, was your Petitioner's defence to Mrs. Nixon's action.

It is a perfect defence unless chapter 341 of the acts of the State of New York, passed May 15, 1876, and the amendatory act, chapter 321, New York laws of the following year, passed May 23, 1877, are applicable to and govern this case. These statutes deny to any life-insurance company doing business in New York the power to declare any policy lapsed or forfeited for non-payment of premium, unless it has given the notice therein prescribed. They also provide for making proof of the giving of such notice by affidavit. These statutes are printed *in extenso* in the petitioner's brief in support of this petition, therefore will not be any further detailed here.

Your Petitioner, in the first place, denies that these statutes have any application to its said policies, or in the action in Washington thereon; and avers, in the second place that—whether under legal obligation to do so, to preserve its rights, or not—all the requirements of these acts were strictly complied with; and that it offered sufficient evidence of such compliance.

Various other questions were raised and discussed in this case, both at *nisi prius* and in *banc*, which—or the facts out of which they arose—it is quite unnecessary to present here, as they all become wholly unimportant, if these courts were in error upon the points above indicated.

At the trial, *inter alia*, the Court applied these New York acts; and held there was a failure to prove the giving of the requisite notices, because the employees of your Petitioner who testified that they were "mailed" omitted to add that each then bore a United States postage-stamp!

This ruling was duly excepted to. In the U. S. Circuit Court of Appeals the judgment against the petitioner was affirmed; the latter Court's opinion basing the affirmance wholly upon the correctness of this ruling. No other is discussed. The mere inadvertence of a witness, testifying under a commission, in the enforced absence of counsel, is made the ground of a judgment against us of over Twenty thousand dollars, by a forced construction of the meaning of language, which is opposed to the construction of the highest courts of several of the states; and of other eminent authorities, as will appear by petitioner's supporting brief.

(Rec. pp 94-95)

Disregarding all minor topics, the questions of general, public interest upon which your Petitioner bases this application for *certiorari* are;—

First. Is it competent for the State of New York to enact a law affecting the contracts of all life-insurance companies "doing business in New York", where the contract is in, and with the citizen of, another state, and suit is brought thereon in such other state?

Second. Did the legislature of New York intend any such extra-territorial application of these laws; or were they simply enacted to protect the citizens of that state and only with a view to their being enforced within her borders?

Third. Do policies which carry no reserve or accretion to be forfeited come within the terms or implication of these enactments?

Fourth. In a case to which these New York laws apply, can notices, in statutory form, of which the proper clerk says, "The notice was *mailed*" at a given date, be excluded—and the requisite proof of notice be held to have failed—"upon the ground that *it was not shown that the postage was prepaid* upon the notice that was sent." (Rec.

The foregoing questions are all distinctly raised in this cause. The judge's charge expressly directed a verdict for plaintiff upon the smaller policy (Rec. 72 to) because of lack of proof of the proper giving of such notice; and substantially the same was done as to the large ploicy. (Rec. to bottom)

Not only were general exceptions taken to so much of the charge to the jury "as in effect stated that no premiums were payable unless notice of such premiums had been given"; (Rec. 53, fol. 94) and "to so much of said instructions as in effect stated that the defendant has failed to prove the sending out of the notices" upon each policy; but the recited passages of the charge upon these subjects were made part of a bill of exceptions (Rec. p. 72) which also embodies the testimony thereon, offered and excluded. (Rec. 71 to 73.)

It will be seen that the first and second of the questions above-suggested concern *every* insurance company "*doing business*" in New York, as to every contract either originating or renewed there since May 16, 1876, even though the contract made prior to that date may have entitled the party to such renewal.

The third concerns a large and increasing number of non-reserve policies.

The fourth affects every case where either an affidavit or entry of "mailing" is made *prima facie* evidence of the giving of such notice as is required to fix liability; as in that of a notarial protest; of a corporate assessment or meeting; and innumerable other instances.

It is thought to be no objection to the investigation of these questions that, at the same time, it affords opportunity to rectify the gross wrong done by diverting, upon a baseless technicality, $25,000 from the funds held by your Petitioner in trust for those justly entitled thereto into the estate of one who, having had his option whether or not to continue an interest therein, determined not to do so.

If this Court does not interfere, then the ends of justice have been signally defeated in this instance, and its administrations travestied.

And your Petitioner, being without further remedy in the premises, now respectfully presents this its petition, accompanied by a certified copy of the record in said cause, and prays that a writ of *certiorari* issue out of this Court directed to the said United States Circuit Court of Appeals for the Ninth Circuit, requiring the said United States Circuit Court of Appeals to certify the cause hereinbefore mentioned to this Court for its review and determination; or that this Court will "otherwise, in such manner as it may direct and determine, review the proceedings and judgment in this case and take such action therein as to it justice may seem to require."

And your Petitioner will ever pray.

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK,
by CHARLES E. WILLARD,
President.

EDWIN B. SMITH,
No. 120 Broadway, New York,
Of counsel for the Petitioner.

STATE OF NEW YORK, }
City and County of New York. } ss:

CHARLES E. WILLARD of New York, who subscribed the foregoing petition in my presence, being duly sworn, deposes and says that he is the President of the above mentioned Provident Savings Life Assurance Society of New York, petitioner, and defendant in the above-entitled cause; that he has read the foregoing

petition, and knows the contents of it, and that the same is true.

CHARLES E. WILLARD.

Subscribed and sworn to before me this 24th day of February, A. D. 1896.

ALFRED E. SMITH, JR.,
Notary Public,
N. Y. County.

[SEAL.]

Notary Public,
Westchester Co.
Certificate filed in N. Y. Co.

To CORA E. NIXON, plaintiff, and to her counsel and attorneys of record in the cause above entitled:—

You will please take notice that the foregoing petition, with a copy of the record to which it refers, and a brief in support of said petition, will be presented to the Supreme Court of the United States on Monday, the sixteenth day of March, 1896, or so soon thereafter as counsel can be heard; and a motion for leave to file the same will then be made, and that the prayer of said petition be granted.

Very respectfully,
EDWIN B. SMITH,
Of counsel for the petitioner, The Provident Savings Life Assurance Society of New York.

Received copy of the foregoing petition, and of the above notice thereon, this 29th day of ~~March~~ February, A. D. 1896.

Carroll, Palmer & Warburton

Attorneys and of counsel for said Cora E. Nixon, plaintiff, in the action mentioned therein.

Office Supreme Court U. S.
MAR 16 1896
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 932.

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY OF NEW YORK, PLAINTIFF IN ERROR,

against

CORA E. NIXON, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR, OPPOSING PETITION FOR CERTIORARI.

STANTON WARBURTON,
LEROY A. PALMER,
THOS. CARROLL,
Of Counsel for Respondent.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1895.

No. —.

THE PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY, PLAINTIFF IN ERROR,

vs.

CORA E. NIXON, DEFENDANT IN ERROR.

The above-named defendant in error, Cora E. Nixon, by her attorneys, Stanton Warburton, Thomas Carroll, and Leroy A. Palmer, opposes the petition of the above-named plaintiff in error on the following grounds:

I.

The petition for the writ is premature.

It does not appear from the record and, as far as counsel are advised, no application has been made to the circuit court of appeals for an order certifying to this Court the several propositions urged in the petition. Surely before this Court, as a matter of comity to other courts, will issue its peremptory writ to the circuit court of appeals it will require such petitioner to first make a like application to the said court. The petitioner should first exhaust his rem-

edies in the circuit court of appeals before putting this Court to the burden of examining into the merits of the case made by his petition, and also before putting respondent to the burden of opposing this motion at a distance of several thousand miles from her home and at a very heavy expense.

II.

The first three questions were not raised in either the trial court or circuit court of appeals.

The petitioner bases his application on four grounds (page 4 of Petition, page — of Petitioner's Brief). We shall not undertake to argue the propositions of law raised by them, for the reason that they were never raised in the court below. In fact, the petitioner in both the trial court and in the circuit court of appeals, both in the oral and printed arguments, admitted that the statute of New York was a part of the contract. Respondent will file in connection with this brief two copies of the brief of the petitioner in the circuit court of appeals, together with three copies of its petition for a rehearing.

On pages 3 and 4 of the said brief petitioner filed in the circuit court of appeals it used the following language:

"Before a New York insurance company can declare for-
"feiture for non-payment of premiums, there must be a com-
"pliance with the provisions of certain New York statutes
"which are given in full below.

"Whether the plaintiff in error had complied with the
"provisions of the statute was the issue before the honora-
"ble circuit court.

"Evidence of such compliance was offered on the trial of
"the cause, but was by the honorable court rejected.

"*Whether such evidence was properly rejected is the question here presented.*"

Petitioner's Brief in 9th C. C. A., on pp. 3, 4.

The above is the only discussion of the said first three propositions now so strenuously urged by petitioner. This Court has held again and again that a question cannot be raised for the first time in this Court.

Again, in the petition for a rehearing the only question discussed is the alleged error of the lower court in rejecting certain evidence it offered as to proof of compliance with this statute.

Without discussing the first three propositions at length, we will state the facts showing these two contracts to be New York contracts. The corporation is a New York corporation. The applications were made to it in New York. The policies presumptively were delivered to the insured in New York, either personally or by letter. In either event it would be a delivery in New York. The premiums were payable in New York. The alleged default and forfeiture, if any, occurred in New York. Proofs of death were to be made at the home office in New York. The policy, when it should mature, was to be paid at the home office in New York. In other words, the place of performance was in New York. Under all the authorities, this would make New York the place of contract.

Scudder *vs.* Bank, 91 U. S., 406.
Pritchard *vs.* Norton, 106 U. S., 124.
Coghlen *vs.* R. R. Co., 142 U. S., 101.

In addition to this, the application for the 15,000-dollar policy contained this clause: "That any policy based on "this application shall at all times and places be construed "to be a contract made in the State of New York."

See Record, p. 59.

This clause in itself would make the contracts New York contracts.

Wash. Bank *vs.* Hume, 128 U. S., 195, on pp. 206–'7.
Griffith *vs.* New York Ins. Co., 36 Pac., 113, on pp. 117 and 118.
Griesemer *vs.* Mutual Life Ins. Co., 10 Wash., 202.
Phinney *vs.* Ins. Co., 67 Fed., 493.
Insurance *vs.* Ficklin, 21 Atl., pp. 680 and 681.

Had these questions been raised in the lower court, respondent would have introduced in evidence the application for the 5,000-dollar policy containing a like provision.

III.

The question of the rejection of the evidence complained of is not one of public importance.

We do not think it necessary to discuss at length proposition No. 4 of the petition (4 and 5 of the brief). We can hardly imagine a case that is more clearly out of the rule as laid down in the case of American Construction Co. *vs.* R. R. Co., 148 U. S., 372; Lau Ow Bew *vs.* United States, 144 U. S., 47, and *In re* Woods, 143 U. S., 202, where this Court defines the only class of cases in which the writ here sought will be granted. In the first case above cited Mr. Justice Gray in speaking for this Court, in reference to an application for a writ of this kind, says the granting of this writ by this Court "has been held to be a branch of its jurisdiction "which should be used sparingly and with great caution, "and only in cases of peculiar gravity and general impor- "tance or in order to secure uniformity of decision."

The trial court and the circuit court of appeals, four judges of eminent ability, all concurred in the view that the evidence was properly rejected.

The question, as a matter of law, is of very little impor-

tance to the public, though to the litigants in this case is of considerable importance. Even if this Court should think it probable that error was committed in the circuit court of appeals, yet that fact would not give this Court jurisdiction. This Court will not undertake to review every cause in which error is committed in the several circuit courts of appeals. If such a rule were established, every case tried in the circuit court of appeals would properly be brought up here and the whole purpose of the act establishing the circuit courts of appeals would be defeated. The circuit courts of appeals would then be a burden both to litigants and to this Court, instead of a benefit. The brief of the petitioner is largely devoted to the question of error in the circuit court of appeals, and not as to whether the alleged error is of sufficient importance to the public to call for the interposition of this Court. We think there is scarcely a case litigated in any of the various circuits involving a like amount of property where questions of more public importance do not arise. The question is a simple one. The legislature enacted a statute which required insurance companies doing business in New York, as a condition precedent to the right to declare forfeited a contract of insurance to serve a certain form of notice which requires, among other things, that such notice "*shall be duly addressed and mailed* * * * at his or her last known post-office address, *postage paid.*"

The petitioner alleged in its answer that it "*had caused a* "*notice* * * * *to be duly deposited in the post-office* in the "city of New York, *postage prepaid, addressed to Thomas* "*L. Nixon* at his address" (Record, pp. 52 and 54). In other words, petitioner thought it necessary to allege separately and distinctly, among other things, the payment of postage. This allegation was denied and the petitioner put upon its proof as to the payment of postage, and it offered none whatever. As the petitioner states in his petition, when it offered in evidence this notice

on its original answer it was rejected, and we think very properly. Instead of relying on this alleged error, it waived it by asking the lower court to amend its answer, which application was granted. In its amended answer it alleged in the same language the mailing of a like notice by its agent from Tacoma as well as New York. (See Record, pp. 81, 82; also p. 84.) It then offered evidence on its amended answer, which was received. Your respondent rebutted this testimony, and the question whether or not it did mail such notice was submitted to the jury, and the jury found against the petitioner. What the evidence was on this subject *pro* and *con.* was not made a part of the bill of exceptions and of course will remain unknown to this Court.

If it was not necessary to prove as a distinct fact the payment of postage, why did it allege it as a fact, twice in its original answer and four times in its amended answer. Surely after it had made these distinct allegations and they were denied it became very material for petitioner to prove them. Not believing this Court will care to go into the correctness of the ruling of the lower court, we will not discuss it further; but if the Court desire to go into the discussion of this question further, we ask your attention to three copies of the brief filed in the circuit court of appeals by defendant in error and which we shall ask permission of this Court to file as a part of this brief.

IV.

Mrs. Nixon tendered the premium.

There is another matter mentioned in petitioner's brief that we desire to notice, as it is misleading.

On reading the petition one would get the impression that neither Mr. nor Mrs. Nixon ever attempted to pay the last premiums on both policies. The facts are as follows: In

the spring of 1890 Mr. Nixon was taken very ill and constantly grew worse until he died, the following spring. In October he was wholly unable to attend to business. Early in that month Mrs. Nixon, knowing her husband was on his death-bed and knowing he had several policies of insurance, went to the safe-deposit vault where these papers were kept and obtained them. The question of life insurance very naturally was the last question she desired to discuss with her husband. She found these two policies of insurance and immediately went to the agent to find out the amount due, if anything, and to pay anything found due. The agent informed her that one premium was a month due and the other a few days past due, and told her to go to the Traders' bank to pay it. She immediately borrowed the money, went to the bank to pay the two premiums; the bank refused to accept them except on condition of her furnishing a health certificate, which, of course, she and they knew she could not do. The reason why the bank made this demand is fully explained in the following letter, written by the agent of the company in Tacoma:

"TACOMA, WASH., *October* 31, 1890.

"HON. SHEPARD HOMANS, *New York City.*

"DEAR SIR: *I think we have just missed having to "pay a loss of* $20,000 *on Thomas L. Nixon, as his "wife came into the office this a. m. to pay his premiums "due October* 11*th and September* 26*th. I told her "the premiums were past due and could not be accepted* "by the bank, as the premiums were past due, as to my "knowledge *Mr. Nixon could not furnish a certificate of health, "as he is now in a critical condition with pernicious blood- "poisoning.* I am sorry for Mrs. Nixon, but I felt, in "justice to the company, this statement should be made. "I immediately went to the bank and notified them "of the circumstances. *They said they had no such in-*

"*structions.* I assured them of the facts, and they said they "would not accept the premiums (which they did refuse to "do). You had better have the company notified of the "rule in regard to accepting lapsed premiums.

"Yours very truly,

"W. C. CHIDESTER."

Record, p. 132.

The company had been constantly accepting overdue premiums from five to thirty-five days. (See Record, pp. 105 to 107.) Upon this state of facts we do not think the company has been sorely injured. In fact, when they saw the insured dying they were quite willing to pave the way for successful defense. On the contrary, we claim it would be doing our client a great injustice if the company had succeeded in defeating the claims of Mrs. Nixon. It accepted premiums constantly overdue when the prospect of the maturity of the contract was apparently far in the future, but when, in the language of the agent, pernicious blood-poisoning had made its appearance the much advertised leniency of the company was at an end.

In closing we desire to call the Court's attention to a number of decisions where this statute has been construed and wherein they require a strict compliance on the part of the company:

Coster *vs.* Ins. Co., 110 N. Y., 15.
Phelan *vs.* Ins. Co., 113 N. Y., 47.
Baxter *vs.* Ins. Co., 119 N. Y., 450.
De Frace *vs.* Ins. Co., 136 N. Y., 144.
Griffith *vs.* Ins. Co., 36 Pac., 113 (Cal).
Warner *vs.* Ins. Co., 58 N. W., 677 (Mich.).
Griesemar *vs.* Ins. Co., 10 Wash., 202.
Hicks *vs.* Ins. Co., 9 C. C A., 215.

Calling your attention to the copies of the briefs used in the circuit court of appeals where this case was heard, which we will ask to file in this case, we ask that this petition of plaintiff in error be denied, with costs to Cora E. Nixon, defendant in error.

S. WARBURTON,
THOMAS CARROLL, and
LEROY A. PALMER,
Attorneys for Cora E. Nixon.